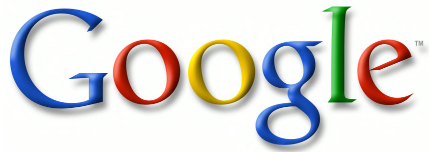

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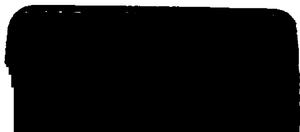

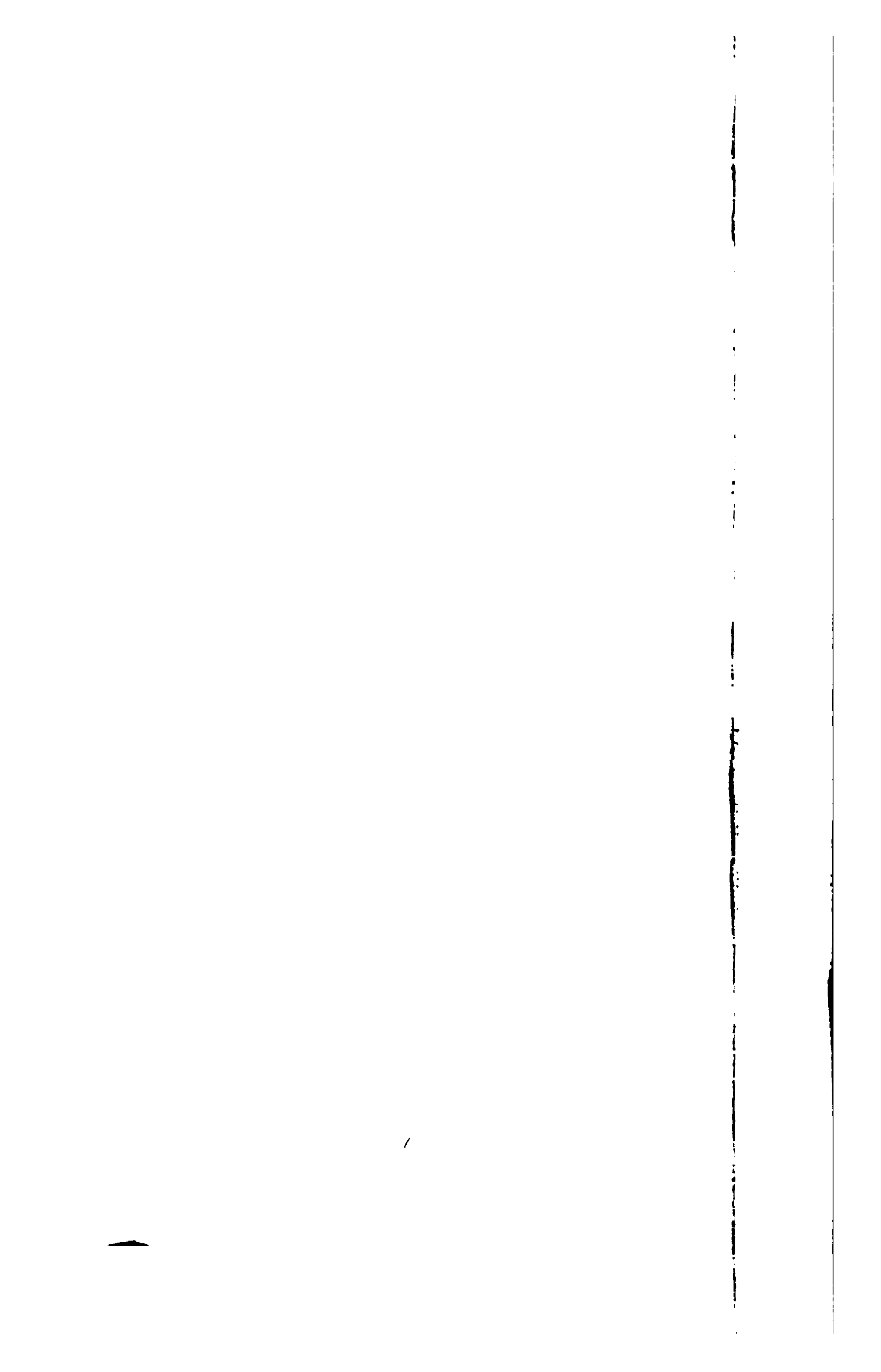

MAINE STATE BAR ASSOCIATION

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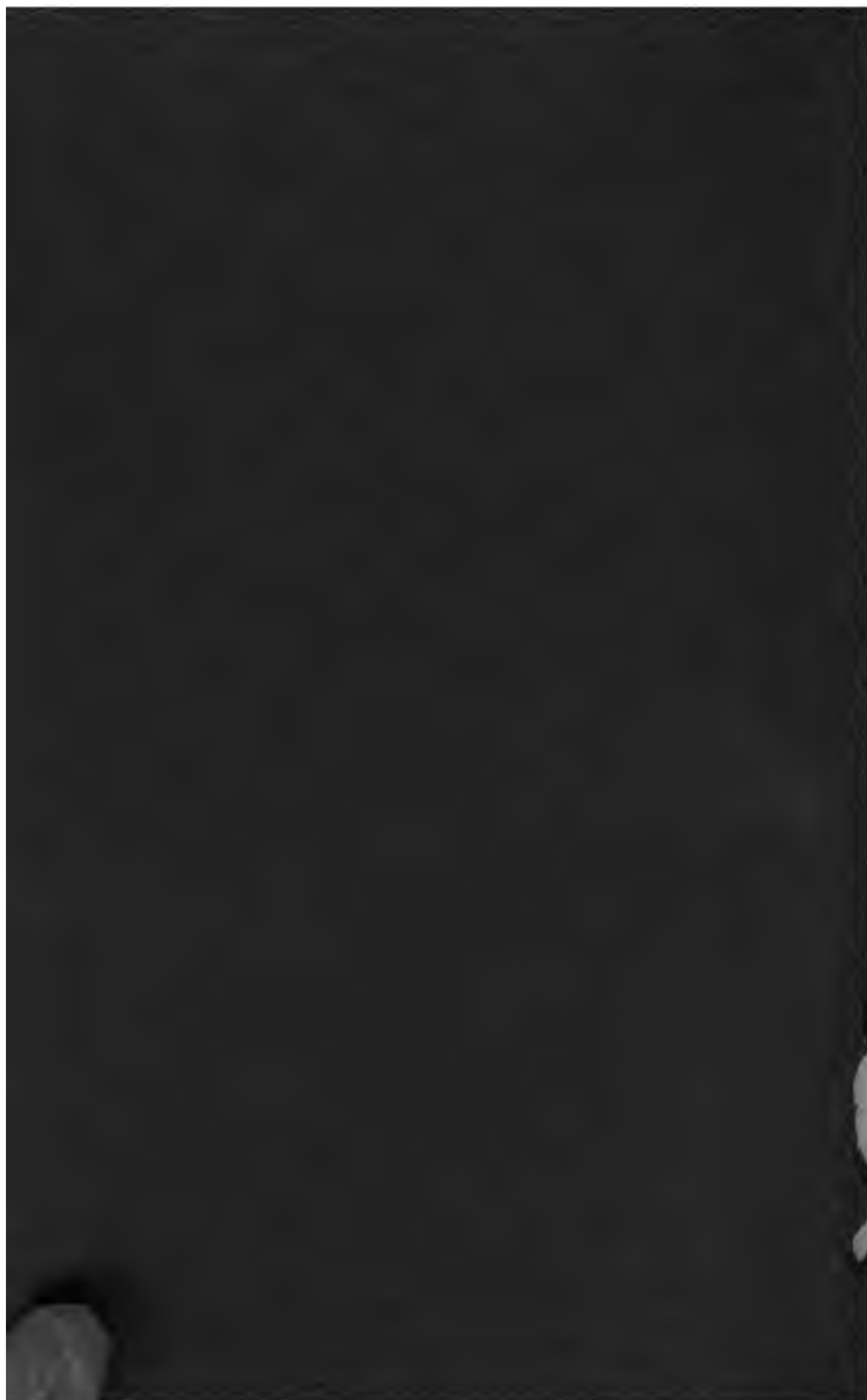

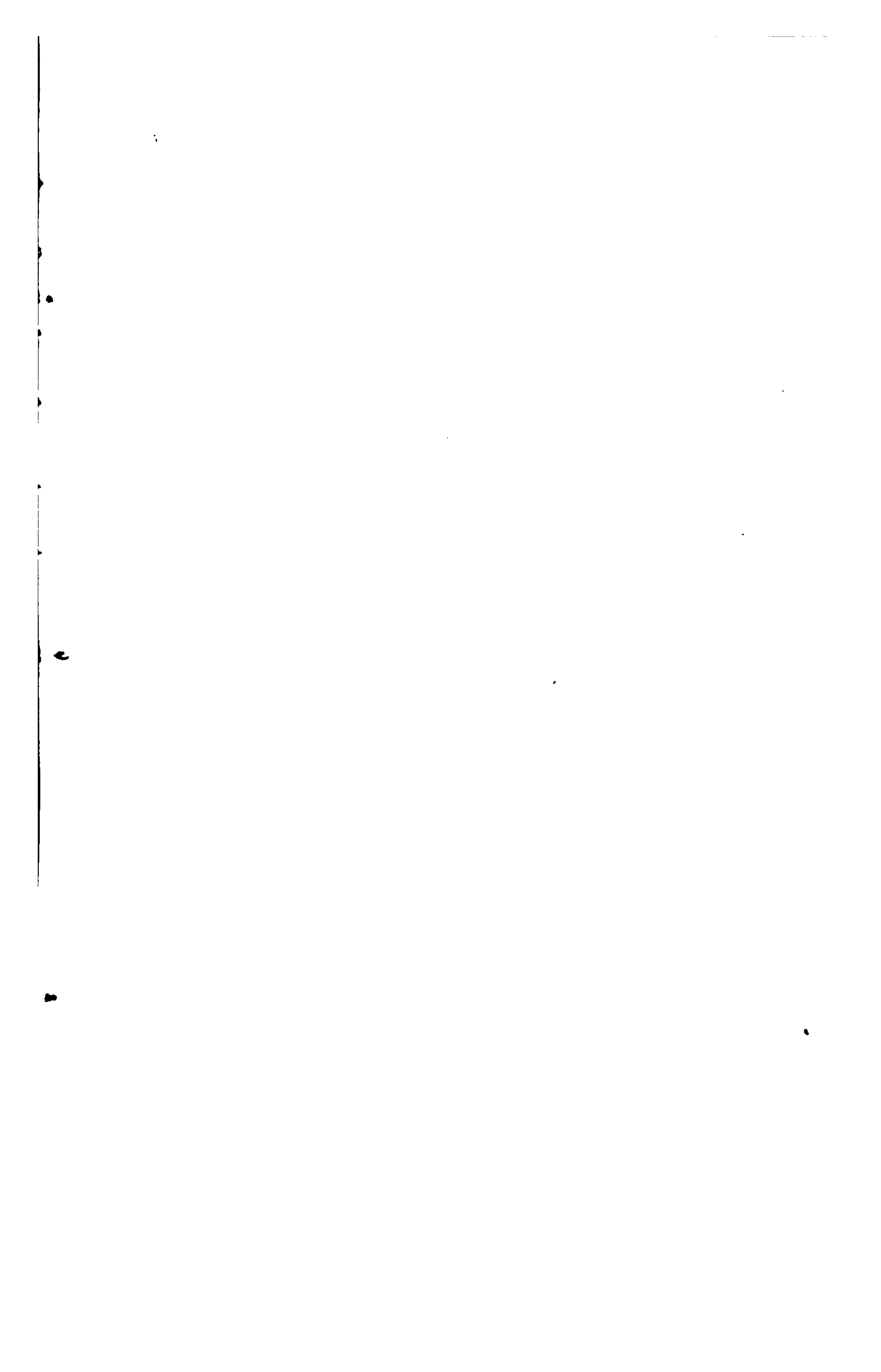

REPORT

OF THE

MAINE STATE BAR ASSOCIATION

FOR

1906 AND 1907

VOLUME 15

With the Proceedings of the Annual Meeting held at Augusta, Maine, February 13, 1907.

AUGUSTA:
PRESS OF CHARLES E. NASH & SON.
1907.

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Office of Secretary of

Maine State Bar Association.

AUGUSTA, MAINE, February 6, 1907.

Dear Sir :—

The annual Meeting of the Maine State Bar Association will be held at the Judiciary Room, State House, on Wednesday, February 13, 1907, at 2.30 o'clock P. M.

The order of business will be as follows:

1. Report of Secretary and Treasurer.

2. Reports of Committees.

3. Election of New Members.

4. Election of Officers.

5. To see if the Association will amend Article 11 of the By-Laws by inserting the word "January" in the place of "February," so that the annual meetings held in Augusta shall be on the second Wednesday of January.

6. To see what action the Association will take with reference to the Annual Meeting of the American Bar Association to be held in Portland, August 26-28, 1907.

7. To see what recommendation the Association will make with reference to the Bill relating to Expert Testimony now pending before the Judiciary Committee of the Legislature.

8. Shall Maine aid in the passage of Uniform Laws relating to Negotiable Instruments, Divorce and Sales.

Discussion opened by Hon. Charles F. Libby of Portland.

9. Should not the Reporter of Decisions state in concise form the points made by counsel, and the authorities cited to each point, so that the profession can see whether and how far the Court has met and answered them.

Discussion opened by Hon. Charles F. Johnson, Waterville, Hon. George H. Smith, Presque Isle.

EVENING SESSION 7.30 P. M.

IN SENATE CHAMBER.

10. Address by the President, Hon. Orville D. Baker, Augusta.

11. The desirability of establishing a System of Superior Courts.

Discussion opened by Hon. Henry W. Oakes, Auburn.

12. (1) Should the State have the right of exception and appeal in criminal cases.

(2) Should the convicted defendant in a criminal case have the right of appeal to the Law Court as in civil cases.

Discussion opened by Hon. S. S. Brown, Waterville.

13. How can our legal procedure be improved in order to facilitate the administration of justice.

Discussion opened by Hon. H. M. Heath, Augusta.

It has been deemed advisable this year to omit the dinner and to devote both the afternoon and evening to the discussion and consideration of subjects of interest to the profession. A cordial invitation is extended to all members of the Association to be present and it is hoped that a large number will attend and take part in the proceedings.

Per order,

LESLIE C. CORNISH,

Secretary.

Maine State Bar Association

ANNUAL MEETING

Augusta, Maine, February 13, 1907.

In accordance with the call for the meeting, which was duly sent to each member of the Association, as provided in the By-laws, the annual meeting of the Maine State Bar Association was held in the Judiciary Room, State House, on Wednesday, February 13th, 1907, at 2.30 P. M.

The meeting was called to order by the President of the Association, Hon. Orville D. Baker, of Augusta.

PRESIDENT BAKER: Gentlemen, the program of to-day's session is contained on the printed slip, a copy of which I think is in the hands of each member of the Association. With the permission of the Association, we will proceed directly to the order of business. The first in the order of business will be the report of the Secretary and Treasurer.

The Secretary's report was then submitted as follows:

SECRETARY'S REPORT.

To the Maine State Bar Association:—

The proceedings of the last meeting of the Association held on Feb. 15, 1905, together with a list of officers and members of the Association have been printed and circulated among the members. At the meeting a vote was passed requesting the Executive Committee to consider the advisability of holding the annual meeting for 1906 during the summer season.

For that reason the annual meeting that otherwise would have been called for the second Wednesday of February, 1906 was deferred. During the summer of 1906 the matter of holding the annual meeting in July or August was considered but for various reasons no plans were formulated and the summer passed without any meeting being held, so that no meeting of the Association was held in 1906.

The Secretary has kept up the exchange of annual reports with other State Bar Associations throughout the Country and has deposited the volumes in the State Library. These reports show that in many States the meetings of these associations occupy two or more days and bring together a large number of the active members of the bar to consider subjects of live interest to the profession. We have attempted to enlarge the scope of our work this year by arranging for the discussion of such subjects at the present meeting, devoting both the afternoon and evening to the work instead of having the established dinner. It is an experiment and it lies with the Association to decide as to the wisdom of the change. The proposed amendment to the By-Laws changing the

date of this meeting from the second Wednesday of February to the second Wednesday of January might increase its effectiveness. By the middle of February the legislature is in full swing and the attorneys who are members as well as many who are engaged in hearings before the committees are very busy with the assigned work. While on the second week in January, which is the second week of the session the legislative work has hardly begun, no committees are in session and all parties might be better able to attend the Bar meeting. The Judiciary Committee very thoughtfully made no assignments of hearings for today, but the Committee on Legal Affairs is in session and its members are prevented from attending this afternoon meeting. For these reasons a change of date might be advisable.

At the last annual meeting the Committee on Legal History was increased to sixteen, consisting of one from each county and they were requested to forward to the Secretary, at least two weeks before the annual meeting, obituary notices of deceased members of the profession in each county, in order that a full report might be made at each annual meeting.

The Secretary wrote a personal letter to each member of that committee and has received responses from the members in Androscoggin, Penobscot, Waldo and York Counties.

Mr. Joseph L. Reade of Androscoggin County compiled brief obituaries of several members of the Bar who died prior to 1905, and also of Jeremiah W. Mitchell who died at Washington, D. C., Nov. 16, 1905, and who was in his early days an active and interested member of this Association.

From Gen. Charles Hamlin of Bangor I have received the obituary of Hon. Josiah Crosby of Dexter who died May 4, 1904 at the advanced age of eighty-seven (87), and who took a great interest in this Association during the time when a change in our system of Courts so as to have an appellate Court independent of a trial Court was under discussion.

Also of William Copeland Clark who died at Lincoln, September 10, 1904, at the age of sixty-nine (69).

From Ellery Bowden, Esq., of Winthrop I received the obituary notice of Hon. Joseph Williamson of Belfast who died December 4, 1902 at the age of seventy-four (74).

All of these will be printed in the next report.

In addition to the foregoing, the following members of the Bar have deceased since our last meeting.

Weston Thompson,	Brunswick.
Hanno W. Gage,	Portland.
Frank E. Southard,	Bath.
George C. Sheldon,	Augusta.
Leonard D. Carver,	Augusta.
Francis W. Guptill,	Saco.

Nor can we forget the great loss that has come to the Bench and Bar of Maine in the death of its honored Chief Justice Andrew Peters Wiswell which occured in Boston on Dec. 4, 1906. His life, short in years, but long in work accomplished, will ever be borne by this Association in affectionate remembrance.

LESLIE C. CORNISH,

Secretary.

The Treasurer's report was then submitted as follows:

REPORT OF TREASURER.

LESLIE C. CORNISH, Treasurer, in account with Maine State Bar Association, 1906-7.

DR.

1906.		
Feb. 14,	To cash balance from preceding year,	$100 71
	Amount received from dues of members,	189 00
		$289 71

CR.

1906.		
Mar. 13,	By paid postage,	$ 5 00
Dec. 18,	Secretary and Treasurer,	100 00
1907.		
Jan. 29,	postage,	8 48
Feb. 11,	C. E. Nash & Son, printing,	12 25
Feb. 13,	cash on deposit to balance,	163 98
		$289 71

MR. CORNISH: I will say, Mr. President, that usually a member of the executive committee, under the by-laws, audits the account for which I have the vouchers and reports later as to its correctness.

PRESIDENT BAKER: The Chair notices that Mr. Fellows, of Bucksport, a member of the executive committee, is present, and would ask if that gentleman would attend to that onerous duty and report at his convenience.

On motion of Mr. Libby of Portland, the reports of the secretary and treasurer were accepted and ordered placed on file.

PRESIDENT BAKER: The next in order of business will be the reports of committees.

SECRETARY CORNISH: There is nothing that I know of, to be considered under that head.

PRESIDENT BAKER: There being no reports presented from committees, the next matter is the election of new members; and as to that the Chair would say that under the By-laws it is provided that all applications shall be made to the member of the committee on membership from the county in which the applicant resides, and the list of the members of the committee on membership is printed on page 27 of the proceedings of the last annual meeting of the Bar Association. Any applications may be presented by the gentlemen present and examined by the appropriate committee in the interim between the afternoon and evening sessions and acted upon at this evening session, if that is agreeable to the Association. I suppose it might safely be added that the treasurer, in his official capacity, would be glad to receive any application for membership and have it acted upon, with a view to increasing the large cash balance that now exists in the treasury. If there are no suggestions to be made in regard to new members at the present time, the next matter will be the election of officers for the ensuing year.

MR. FELLOWS of Bucksport: Mr. President, I move that a committee of three be appointed to nominate officers for the ensuing year.

The motion was agreed to.

The President thereupon designated as members of that committee Messrs. Fellows of Bucksport, Morrill of Auburn and Ryder of Bangor.

PRESIDENT BAKER: I suppose the entire set of officers are to be designated by this committee, so that the Chair will await their report.

Perhaps in the meantime it might be wise to consider the next item in the order of business, which is to see if the Association will amend article 11 of the By-laws by inserting the word "January" in the place of "February", so that the annual meetings held in Augusta shall be on the second Monday of January, instead of February. The suggested reasons for that change have been outlined by the secretary in his report, which are that the meetings might be more largely attended and that the proceedings might be less impeded if the meetings were held in January, when the session of the Legislature is still in its infancy, rather than in February when all the committees and various members of the legal profession are occupied. The Secretary has suggested that in the printed order there is a mis-print, and that the proposed change was to the second "Wednesday" of January instead of the second "Monday"; so that the question for consideration by the Association is whether they will vote to amend article 11 of the by-laws, so that the annual meetings shall be held on the second Wednesday of January instead of the second Wednesday of February.

Mr. B. L. Smith of Patten, moved that the By-laws of the Association be so amended.

The motion was agreed to.

PRESIDENT BAKER: The motion is adopted and the By-laws are so ordered changed.

PRESIDENT BAKER: The Chair will be governed by the suggestions of the Association, whether the discussion shall be opened at this time upon the question following, or whether the report of the committee on nomination of officers will be presented and acted upon at this time.

Mr. C. F. Libby of Portland, moved that the Association proceed with the business as outlined in the printed program.

The motion was agreed to.

PRESIDENT BAKER: The next item on the program I think can be easily disposed of. It is to see what action the Association will take with reference to the annual meeting of the American Bar Association, to be held in Portland, August 26th to 28th, 1907. The Chair will state that Brother Libby of Portland, has had largely to do with this, and at his suggestion the President of the Association and the Secretary have taken steps to have action taken by the appropriate committee of the Association, and no doubt the members of the Association will be very glad to hear from Brother Libby in regard to this matter.

MR. C. F. LIBBY of Portland: Mr. President and Gentlemen of the Association, I naturally feel a good deal of interest in this matter of the meeting of the American Bar Association, which will be the first meeting of this Association ever held in Maine. Hitherto the larger cities have always succeeded in obtaining

that favor, if you may so call it. The importance of this meeting is a matter that is hardly appreciated by members of the Bar who have never attended the meetings of the American Bar Association, an association which has been growing in influence and in the work which it has accomplished for the profession from year to year, so that to-day it stands recognized as a national body, representing the lawyers of the United States; and within its membership are included probably as many distinguished members of our profession as you could well draw together. This meeting gives promise of being a meeting of unusual importance for several reasons. In the first place, the Association has been growing in membership from year to year, and this year the International Law Association, whose headquarters are in London, England, and which meets in different countries from year to year, has indicated its disposition to meet with the American Bar Association. In addition to that the executive committee of the American Bar Association has extended an invitation to the Lord Chancellor of England to become its guest for that occasion. Of course we do not know yet whether the Lord Chancellor will be allowed to leave the realm for that purpose, but we twice had with us the Lord Chief Justice of England, and the present Lord Chief Justice has indicated that, if he could make his arrangements, it was his desire to come over here in connection with some of these meetings. So that, in the first place, this bids fair to be an unusually large meeting and an unusually interesting one. The honor of having such a body in any city has always been appreciated by the Bar of the state, and not only by the Bar of the state but by the officials of the state. For instance, at the last annual meeting in St.

Paul, Minnesota, they were received by the Governor, who made an address, and the capitol that cost with its decorations and furnishings something like four million dollars, was placed at the disposition of the members of the American Bar Association.

I am only speaking of this as showing the way in which the American Bar Association has been treated. At that time the Minneapolis Club, the important club of the city, threw its doors open to the members of the Association; the Country Club entertained the members of the Association with their ladies; and finally after the regular meetings of the Association had closed, a special train took the members out to Lake Minnetonka, and they were entertained by the Country Club there. I speak of this to show that some burdens and some work attend necessarily the reception and entertainment of a distinguished body of men such as are likely to visit us.

The Cumberland Bar Association, the local association where they are to meet, has already taken action in the matter and appointed a committee of reception to act in connection with myself in devising methods of entertainment and arrangements for the comfortable accommodation of these gentlemen. The ordinary attendance at these meetings is from 250 to 275, and if the distinguished Lord Chancellor should accept our invitation we are likely to see more rather than less.

For that reason I thought it would be a nice thing if the State Bar Association should appoint a committee to co-operate with the Cumberland Bar Association in laying out plans to properly care for our distinguished friends from other states, and that is the reason why I requested the president and secretary of this Association to put it upon the program for this meeting.

Before I sit down, let me make another suggestion. I hope that every member of our profession who takes a pride in its work, will ask to become a member of the American Bar Association. I think there were over two hundred new members at St. Paul last year from the local Bar of that state, and in some cases it has been even a larger number than that. Now, my suggestion is not altogether a selfish one. I have regularly attended the meetings of the Association for a great many years. It is the one thing I would strive not to miss, even if I had to make a good deal of sacrifice. Of course, you are not obliged to remain members if you do not wish to, but I believe that most of you will not allow that membership to drop. The expense is nominal, being but five dollars a year, and this gives you the published reports that are issued every year in two volumes, on account of the important papers that have grown with the work of the Association; and I will further say that it will give me great pleasure if you will just send in your names to me, to see that they go through the regular course so that by the time of the annual meeting, which is the last week in August, commencing with Monday, you can be elected at that first meeting and the dues need not be paid until that time. I believe that this is an occasion that will be an honor to the State of Maine, and I should hate to have these gentlemen go away without feeling what the cordial hospitality of Maine people means.

PRESIDENT BAKER: With Brother Libby's permission, we will interrupt a moment the subject now under discussion, in order to take the report of the committee on nomination of officers for the ensuing year.

MR. O. F. FELLOWS of Bucksport: Mr. President, your committee begs leave to report the following nominations for officers of the Association for the ensuing year:

OFFICERS FOR 1907—1908.

President.

Orville D. Baker, - - - Augusta.

Vice-Presidents.

L. B. Deasy, - - - - Bar Harbor.
George C. Wing, - - - Auburn.
Frederick H. Appleton, - - Bangor.

Secretary and Treasurer.

Leslie C. Cornish, - - - Augusta.

Executive Committee.

W. H. Newell, - - - Lewiston.
Chas. S. Cook, - - - Portland.
O. F. Fellows, - - - Bucksport.
John W. Manson, - - - Pittsfield.
Jos. E. Moore, - - - Thomaston.

Committee on Membership.

Reuel W. Smith, - - - Auburn.
Beecher Putnam, - - - Houlton.

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Jos. E. Moore, - - - Thomaston.

Committee on Membership.

Reuel W. Smith, - - - Auburn.
Beecher Putnam, - - - Houlton.

Morrill N. Drew, - - -	Portland.
Cyrus N. Blanchard, - -	Wilton.
B. E. Tracy, - - - -	Winter Harbor.
J. H. Montgomery, - -	Camden.
Joseph Williamson, - -	Augusta.
Emerson Hilton, - - -	Wiscasset.
A. E. Herrick, - - -	Bethel.
M. Laughlin, - - - -	Bangor.
Frank E. Guernsey, - -	Dover.
W. T. Hall, Jr., - - -	Bath.
C. O. Small, - - - -	Madison.
R. F. Dunton, - - -	Belfast.
F. I. Campbell, - - -	Cherryfield.
George A. Goodwin, - -	Springvale.

Committee on Law Reform.

Charles F. Libby, - - -	Portland.
John A. Morrill, - - -	Auburn.
E. C. Ryder, - - - -	Bangor.
Leroy T. Carleton, - - -	Winthrop.
E. N. Merrill, - - -	Skowhegan.

Committee on Legal History.

J. L. Reade, - - - -	Lewiston.
Ira G. Hersey, - - -	Houlton.
Robert T. Whitehouse, - -	Portland.
S. Clifford Belcher, - -	Farmington.
A. W. King, - - - -	Ellsworth.
Norman L. Bassett, - -	Augusta.
Arthur S. Littlefield, - -	Rockland.
William H. Hilton, - -	Damariscotta.

Ralph T. Parker, - - -	Rumford Falls.
Charles Hamlin, - - -	Bangor.
Henry Hudson, - - -	Guilford.
Jos. M. Trott, - - -	Bath.
Forrest Goodwin, - - -	Skowhegan.
Ellery Bowden, - - -	Winterport.
L. H. Newcomb, - - -	Eastport.
Fred J. Allen, - - -	Sanford.

Committee on Legal Education.

Tascus Atwood, - - -	Auburn.
R. W. Shaw, - - - -	Houlton.
Benjamin Thompson, - -	Portland.
N. P. Noble, - - - -	Phillips.
H. E. Hamlin, - - -	Ellsworth.
Frank G. Farrington, - -	Augusta.
Reuel Robinson, - - -	Camden.
O. D. Castner, - - -	Waldoboro.
A. S. Kimball, - - -	Norway.
Bertram L. Smith, - - -	Patten.
W. E. Parsons, - - -	Foxcroft.
Charles D. Newell, - - -	Richmond.
George G. Weeks, - - -	Fairfield.
Wm. P. Thompson, - -	Belfast.
George A. Curran, - - -	Calais.
Willis T. Emmons, - -	Saco.

Mr. C. F. Libby of Portland, moved that the Secretary be instructed to cast the vote of the Association for the officers as nominated by the committee.

The motion was agreed to.

The Secretary thereupon cast a ballot for the above named officers, who were declared duly elected officers of the Association for the ensuing year.

PRESIDENT BAKER: The question now recurs upon the suggestions made by Brother Libby of Portland, with respect to item six upon the printed program. The Association has heard the very pertinent remarks of Brother Libby, and certainly the Chair can only add its sanction to those. The distinction of having such a body of men meet in the State of Maine is one that we certainly should appreciate and should act upon. I understand that Brother Libby makes in effect two suggestions. First, to put the last one first, that as many as possible of the members of the Bar of this state should apply for membership in the National Association, and the Chair would gladly second the suggestion of Brother Libby in that respect, but it is of course addressed to the individual members and to their own action as they may deem proper. The Chair will consider the suggestion of Brother Libby in regard to the appointment of a committee to be in the form of a motion that a committee,— and of how many?

MR. LIBBY: I should think perhaps a committee of five members. I think that is the number appointed by the Cumberland Bar Association.

PRESIDENT BAKER: The motion then before the Association is that a committee of five be appointed to act in co-operation with the committee appointed by the Cumberland Bar Association to provide for the entertainment and proper reception of the distinguished guests who will be in Portland at the meeting of the American Bar Association this summer.

The motion was agreed to.

Mr. Libby then moved that the committee be appointed by the Chair, which motion was duly carried.

PRESIDENT BAKER: The Chair will announce that before the adjournment of the afternoon session the members of that committee will be designated.

The next matter upon the order of exercises is No. 7, "To see what recommendation the Association will make with reference to the bill relating to expert testimony now pending before the judiciary committee of the legislature. The Chair will say that a copy of this bill has been kindly furnished by Brother Putnam, and as it is brief, the Chair would ask that the Secretary read it.

Secretary Cornish then read the bill as follows:

STATE OF MAINE.

In the year of our Lord one thousand nine hundred and seven.

An Act relating to Expert Evidence.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:

"Section 1. In any case, civil or criminal, in the Supreme Judicial Court, or any Superior Court, when it appears that questions may arise therein upon which expert or opinion evidence would be admissible, the court, or any justice thereof in vacation, may appoint as examiner one or more disinterested persons qualified as experts upon the questions. The examiner at the request of either party, or of the court or justice appointing him, shall make such examination and study

of the subject matter of the questions as he deems necessary for a full understanding thereof, and such further reasonable pertinent examination as either party shall request. Reasonable notice shall be given each party of physical examinations of persons, things and places, and each party may be represented at such examinations."

"Section 2. At the trial of the case either party or the court may call the examiner as a witness, and if so called he shall be subject to examination and cross-examination as other witnesses. For his time and expenses incurred in the examination and in attending court as a witness he shall be allowed by the court a reasonable sum, to be paid from the county treasury as a part of the court expenses. The court may limit the witnesses to be examined as experts to such number on each side as it shall adjudge sufficient for an understanding of the contention of the parties on the question."

"Section 3. When upon the trial of any case in either of said courts questions arise upon which expert or opinion evidence is offered, the court may continue the case and appoint an examiner for such questions as provided in section one."

"Section 4. In all cases in said courts where a view by the jury may be allowed, the court, instead thereof, may appoint one or more disinterested persons to make the desired inspection in the manner and under the same rules and restrictions as in the case of a view by the jury. The viewer thus appointed may be called as a witness by either party or by the court, and shall be subject to examination and cross-examination like other witnesses. He shall be allowed by the court a reasonable sum for time and expenses incurred, to be

paid by the party asking for the view and taxed in his costs, or to be paid by the county as a part of the court expenses at the discretion of the court."

PRESIDENT BAKER: Gentlemen, you have heard the measure read which is now pending before the legislature, and the matter is now open for discussion.

MR. C. F. LIBBY of Portland: Mr. President, it may be well to recall what led to the preparation of this bill by the Chief Justice. All who were present at the meeting two years ago will remember the very interesting address delivered by Mr. Justice Emery at that time, and at its conclusion he was requested, as I remember it, to prepare a bill embodying his suggestions. He was not able to do it so that it could be presented at that session of the legislature, but, bearing it in mind, he did prepare this present bill and sent it to me and I think also to the President of the Association, outlining the reasons why certain things had been included in it. His address was on the necessity of devising methods of avoiding the great conflict in medical testimony which he had found during his experience to exist. This bill is broader than his address; and it seems to me that that part of the bill which allows the court to appoint a viewer to take the place of the jury, which is based on the practise of foreign countries where jury trials are not known in court, is of doubtful expediency. I do believe that we may well try the principle of this bill as applied to medical testimony.

In a recent letter which I had from the Chief Justice, in connection with an invitation to participate in a discussion of an address which is to be delivered Saturday

evening by Dr. Clark Bell, President of the Medico Legal Society of New York before the Maine Academy of Medicine in Portland, where he is to discuss from the medical point of view the necessity of some improvement in the expert evidence of a medical nature in criminal cases — I was asked to communicate with the Chief Justice and determine the nature of his bill, and also what his judicial experience would lead him to suggest as a remedy for an admitted existing evil. I was also asked to extend an invitation to the President of this Association to be present. I have performed the duty as I was requested, but was sorry to learn that the Chief Justice is about entering upon an important criminal case, and he could not be present, and your President, as I understand, has been somewhat under the weather and did not feel like venturing out late in the week where he could not get back to attend church on Sunday. So I don't know whether the gentlemen I was requested to invite will be present on that occasion; but it only goes to show the increased interest there is in this question,— what can be done to eliminate the sometimes indecent exhibition of conflict of medical authority where partisanship seems more or less to play a part in connection with the trial of cases.

Now it does seem to me that the principle of this bill as applied to medical expert testimony may well be adopted and tried. It can do no harm. It does not prevent the counsel on either side calling in further medical evidence if they are not satisfied that they have got at the facts and the true medical point of view through the experts appointed by the court. And in view of the reasons that have been given, not only in the address by the Chief Justice but in the various legal and

medical publications, that something ought to be done to stem the tide in certain directions; that instead of getting expert evidence we are getting simply what we get in so many other cases, rather partisan evidence and I would suggest that an amendment to the bill be offered limiting it to the appointment of medical experts, and that we try it in this state and see how it works.

PRESIDENT BAKER: The Chair would call the attention of Brother Libby to the latter part of the second section. "The Court may limit the witnesses to be examined as experts to such number on each side as it shall adjudge sufficient for an understanding of the contention of the parties on the question,"—whether it will be open to the court, if he saw fit, to cut off all witnesses excepting the ones appointed by the court under that?

MR. LIBBY: I don't see how he can. He can limit them on each side, and they would not be witnesses on one side and the other if they have been appointed by the court.

PRESIDENT BAKER: So that it should not be overlooked, I called your attention to that merely. The matter is still before the Association, and the Chair would be glad to hear from any member.

MR. S. S. BROWN of Waterville: Mr. President, I don't know as I quite understand this bill. I have been suffering for some time from the effects of the grip and my hearing at this time is a little defective. Do I

understand by this bill that the affirmative of that first section means that the court may limit the number of witnesses that a party may produce.

PRESIDENT BAKER: As medical experts?

MR. BROWN: Yes.

PRESIDENT BAKER: The Chair will read that portion of the bill which is proposed, in order to answer that question. The first section in effect provides that the court may appoint a medical expert, and he shall examine and study the subject matter, etc., and he is open to examination by either party. It is also provided that "Reasonable notice shall be given each party of physical examinations of persons, things and places, and each party may be represented at such examinations." And it is provided that at the trial this medical expert appointed by the court shall be subject to examination and cross-examination. The final clause of that second section is as follows: "The court may limit the witnesses to be examined as experts to such number on each side as it shall adjudge sufficient for an understanding of the contention of the parties on the question." That I think will show the status of the bill.

MR. BROWN: Mr. President, I understand there is a growing evil in regard to this kind of testimony. It does not strike me as being wise to give to the court real and absolute authority to limit the number of my witnesses or the witnesses of any other lawyer. I don't know of any judge that can possibly know all the facts

of a case so well as the lawyer who has prepared the case on the one side or the other; and I hesitate, certainly, in giving my consent that this Bar should recommend any such a proceeding. I do not like it, and I do not think it is right. If I am preparing a case, I think I can know better than any judge can know beforehand, what I want to put in in the way of evidence, and if we move affirmatively upon that question today I understand the effect of it will be the recommendation of this Bar that they do adopt that law in this state. I do not like it; I do not believe in it and I don't think it is wise to do it. There may be a great deal that we want to remedy, but I don't think that is the remedy.

MR. HENRY W. OAKES of Auburn: Mr. President, this question occurred to me in connection with the bill—how far it will go in its present form to remedy the existing evil? If an expert appointed by the court simply is appointed, he perhaps stands in a position of an impartial adviser of the court, but if immediately evidence is put in on the one side and the other of partial advisers of the court in the ordinary way, I fail to see where very much progress is to be made; and it occurs to me that it would be more desirable to limit the thing more closely, to say that when it is desirable to have expert testimony in addition to such as may be given by a physician who is the actual medical attendant of the person, that then application may be made and other expert testimony shall be limited to one or more experts chosen by the court. I have not examined the bill, and I simply make this as a suggestion.

MR. C. F. LIBBY: I don't quite get your idea. You would not have the court appoint an independent

expert in the first place, allowing either party to call other experts?

MR. OAKES: I would have the expert who shall be called as an expert simply, as expert to be designated by the court.

MR. LIBBY: And have no others, I understand.

MR. OAKES: And have no others. That is, have them as the advisers of the court, as the court would appoint an auditor to advise in regard to the facts in respect to an accounting; otherwise, it seems to me, we get the same controversy between adverse parties.

MR. LIBBY: If you will pardon me another word—I think the theory of the Chief Justice is this: If one or two experts are appointed by the court, standing independently of the parties, it is quite possible that their report might be accepted by both parties and no expert evidence be called by either side. It may be that one of the parties feels that a mistake, scientifically, has been made, and therefore they desire to go more fully into it and to produce evidence bearing upon the accuracy of the opinion expressed by the expert appointed by the court. Now, should they not be allowed to do that in an important matter, which covers, as I understand it, criminal cases as well as civil cases? Would you cut out absolutely the right of counsel to go out and seek further expert evidence, where he felt that the case had not been fully covered, because I suppose there is no one expert that can be appointed by the court, or no two perhaps, that in a very important matter where

life or imprisonment for life is involved, that they would not feel that that door ought to be open. But it certainly will have a tendency to limit the number of experts that are called; in other words, it will have a tendency not to allow a person of unlimited means to call such a large number of experts as to over-lay a person of limited means, who perhaps feels that he can not go to the expense of producing an equal number of experts. I think there is a principle involved there that should be taken into consideration. I appreciate fully the hesitation which any member of the Bar entertains as to allowing the court to dictate to him absolutely the number of witnesses he shall call. The responsibility of the case rests upon counsel who has made a very careful study of the whole case, and I am almost inclined to suggest, and, Mr. President, I will make a motion so that it might be something that we can direct our discussion to, that the Maine State Bar Association approves of the principle of the bill drawn by Chief Justice Emery, so far as applicable to medical experts in the first section, but does not approve of giving the court the power to limit the number of experts that may be called by either party; and I make that motion so that we may have something before the Association for discussion.

PRESIDENT BAKER: Would that motion also cover your views with reference to the last section of the bill, which provides for the appointment of a viewer?

MR. LIBBY: I do not believe in that. I believe that is introducing a practise where they have no jury trials. I believe that the only value of a view of a jury

is to have the jury see the object, and not have somebody else see it and tell them what they saw. If it is worth while to have a view, I think we are entitled to have the jury view it.

MR. BROWN: Now, Mr. President, if I understand that motion of Brother Libby's, I think I will second it. I believe it well enough to appoint an expert, but to say to the lawyer that he shall put in so much evidence and that he shall not put in any more—we might just as well leave it all with the judge. I would not care about that at all.

MR. WILFORD G. CHAPMAN of Portland: Mr. President, I would like to have Mr. Libby state, if he will, why he deems it expedient to limit that to medical experts.

MR. LIBBY: Because the other classes of experts are brought into court so rarely, and they involve special matters which have not as a rule, I think, developed this partisanship of opinion, that is, in any such degree. And I think if we are going to try the principle of this bill we had better try it in one case, in one class of cases where we recognize there is an existing evil, and not extend it over all classes of experts who are rather rarely called into court; and for the purpose of trying the bill and finding out whether it has any value, I thought we had better limit it to one class, and that is the most numerous class brought into court.

MR. J. H. MONTGOMERY of Camden: Mr. President and members of the Association, I assure you

that it is with some hesitation that I attempt to say anything on this subject. I am very glad that a member of the court is with us this afternoon. It is encouraging in many ways to us. First, because it tends to restrain our disposition to criticize the court too severely, and this encourages us to think that we have got them where we can talk and they cannot decide the issues that may be raised.

Now, this question as it appears to me, is open to objection, and that is what has prompted me to say a word. I think one objection is that it restrains and limits the ingenuity, the independence and the care that a practising attorney ought to have. If he is going to conduct a case and gives to that case all the powers of his faculties and his mind and reason, there should be no limit upon that ingenuity, none whatever. It is the spirit of our government. And when we read the great case that is on trial in New York to-day (the Thaw trial) and think of the ingenuity with which that case is being conducted, we might almost stand in amazement. We may think that it is an extreme case, and that they are adopting extreme methods perhaps, but I tell you there are the rights of an individual there and the life and liberty of an individual there to-day that are worth everything, and it is a knowledge that we are obtaining of human nature that never could be obtained in any other way, and it is being tried out by the ingenuity and the independence and the courage and character of the lawyer; it never should be restricted, anyway, I mean, unreasonably restricted.

Now, take this proposition; supposing we say that the court shall appoint an expert, no matter how many more we may be allowed to bring in, but before the jury

will always be the influence of that expert, the court's expert, and it will take a strong man and a bold man to overcome it. If it is in favor of one side or the other then that side will claim that this comes from the Bench, from the wisdom of the Bench, and there is hardly any way of meeting that. Now, I know that this has had been put forward by the learned Chief Justice with his usual care and thought, but somehow I cannot help feeling that it is a restraint upon me if it is adopted, in the trial of cases, and I shall be loath to accept it anyway.

MR. STILPHEN of Gardiner: Mr. President, if we are to have legislation on this subject it should be legislation that is of some value to the state and some value to the cause. If it is an expert in medical or surgical matters — and it is a question whether medical covers surgical, and that is a matter which should be considered before we pass upon this question. If an expert is appointed by the court of course it would be expected that he would be impartial, and that he would be as good an authority upon the subject as could be found by the court, and very properly he would have a very great influence with the jury, and if we are to have anything from this bill I think that is just what is wanted. But if we put him in a position of announcing his position after most careful and diligent study of the subject and giving all the facts in relation to it that can bear upon the matter and giving them all consideration, if then he is to be open to all the attacks that successful counsel could make through their partisan surgeons and physicians, then I think you would find very few who would take that position. If a physician or surgeon comes into court,

retained by one side or the other, his aim is the same as that of counsel on that side, and that is, to win. I recall a case here in our own county where experts were called, and the remark that one of the experts made to one of the attorneys after he had been notified that he would be called as an expert. He says, "undoubtedly he (or she) is as guilty as the devil, but I am retained to help him (or her) here and I shall do all I can." That is the spirit. Now, if we are to gain anything by this bill it is by authorizing the court to appoint one expert, the best expert to be procured, impartial, and no other experts to be allowed.

MR. CHAPMAN of Portland: Mr. President, it seems to me that this expert is somewhat analagous to an auditor, but the appointment of the expert would be lacking some of the advantages which an auditor has, in one particular at least, because he would try out and report on a single fact; but the chief objection that I find to the motion seems to be this: That under the law suitors or counsel have a right to produce any evidence legally admissible which is pertinent to prove the proposition in the case. Now, to restrict that by limiting the evidence that can be put in on that subject would put very often an important case in the hands of the expert, and that is a matter of such doubtful expediency that I think this Bar should hesitate to approve of it. But as a matter of fact it does not. While the difficulty relating to expert testimony is apparent to us all it is no different from the difficulty that we get from conflicting testimony of all kinds. The experts recognize it because they are men of attainment and skill and have come in there and testified apparently on opposite sides of the case, largely,

because the questions as put to them are hypothetical questions. But it seems to me as though the good sense of counsel and the good sense of the medical profession can correct that evil. Both sides realize it, and while there may be advantages coming from this proposition, the disadvantages of excluding evidence which is pertinent to prove the propositions undertaken to be proved in the case is so contrary to the spirit of the common law, and so contrary to our practise, that the benefit of the doubt ought to be against this motion.

MR. LIBBY: The motion that I made?

MR. CHAPMAN: Yes.

MR. LIBBY: Will the members pardon me one word more. This is the first time that the Bench has tried to co-operate with the Bar in devising legislation to meet an admitted evil. Now, it does seem to me that we ought to proceed slowly before we throw away all the suggestions of the Chief Justice of this state. I don't know how the rights of counsel or anybody else are any more impugned by the appointment of an expert in a medical case than by the appointment of an auditor to state an account.

Mr. CHAPMAN: Aren't they different? The auditor hears both sides and tries it out, and hears the evidence just the same as the court.

MR. LIBBY: At the physical examination both sides can be present with the experts provided here; each side may bring out any facts that they choose so that the expert in forming an opinion shall have all that both

sides can present to him. Now, what is the position of the expert? He is simply a man appointed by the court, so that he may be disinterested. His opinion is not final. The jury has got to find the facts finally. He is one among six or seven perhaps that may be called afterwards by the parties to the cause. Now we are trying to meet that very evil. This does not go very far, and it seems to me that it is worth trying. It seems to me it is an effort of the Bench, according to its point of view, to co-operate with the Bar, from their point of view to see if something cannot be done. Are we going to take refuge in the statement that there is nothing to be done? Are we going to say it is well enough as it is? It cannot be so. Any lawyer of large experience who has to deal with this class of cases knows that it is a positive evil as it exists to-day. The medical profession are just as anxious to be relieved from being put in the position of being partisan in this matter as the Bar or the Bench is itself. I do not know of a respectable physician who is called into court as an expert who does not desire to be placed in this very position, and I have heard them speak of it again and again. This matter has been the subject of discussion before medical conventions, and it does seem to me that it can do no positive harm, and it may lead to good.

Now I submit when a co-operative effort is made on the part of the Chief Justice, who came here and delivered this address and was asked to draft a bill embodying his suggestions — it does seem to me that it would be very unwise, if not ungrateful treatment on the part of the lawyers of the state, to say, no, there is nothing of value in it. It is practically saying that the co-operation of the Bench goes for nothing, and that we

who are practising at the Bar are so much wiser and that we think we had better leave well enough alone. I suggest that that very thing is involved in the action of the Bar Association to-day, and I hope that they will go slow before they will practically offer a rebuff in this important matter.

MR. JOHN A. MORRILL of Auburn: Mr. President, I was very much interested in the address given by Justice Emery two years ago on this subject. I thought it was a learned, scholarly address. It received the close attention of those present, and it seemed to appeal in its reasoning and in the conclusions of Judge Emery to those present. Mr. Libby has pointed out very clearly wherein this bill as proposed goes beyond the principles which Judge Emery discussed. Judge Emery himself says it does. Now, in view of the fact that there is this existing evil,— in view of the fact that Judge Emery at the request of this Bar Association prepared that draft at the expense of a good deal of time and trouble, I do hope that no action will be taken by which that will all go for nothing. I hope that Mr. Libby's motion, carefully limited as I believe it is, will prevail.

MR. L. B. DEASY of Bar Harbor: Mr. President, I rise not to express any opinion upon the subject under discussion but to ask Brother Libby what answer he would make to this objection which is raised to the principle of the appointment of an official medical expert. Some cases requiring the services of a medical expert involve controversies between divers classes of medicine. A medical expert must belong to one of those classes. Is it quite fair to the other?

MR. LIBBY: I should suppose that in ordinary cases the court would appoint a gentleman of such broad learning and experience in his profession that there would be no question whatever that he was an expert. I should suppose further that ordinarily there would be no element introduced into a case growing out of different schools of medicine. I do not understand that the laws of anatomy or physiology differ whether one school of medicine attempts to deal with the matter or another school of medicine. I understand that we are coming together as to the principles underlying this great department of human effort. Physiology, anatomy and surgery are the same, whatever the schools may be, and I do not believe there is going to be any great difficuly in dealing with it any more than there is difficulty to-day where they are called by counsel, growing out of the different schools of medicine. If one man knows as much as another and can give as good a reason for his opinion I care not under what name he comes. The question is: Is he an acknowledged expert in his profession? And I think there would be no difficuly growing out of the matter.

PRESIDENT BAKER: In answer to the inquiry of Brother Deasy, as the members do not have the advantage of having the printed bill before them, the Chair would call the attention of Brother Deasy, as it may aid his inquiry, to the language of the first part of the first section of the bill, which says: "any justice thereof in vacation may appoint as examiner one or more disinterested persons qualified as experts upon the questions." That perhaps may be pertinent to the inquiry of Brother Deasy.

MR. EBEN W. FREEMAN of Portland: Mr. President, there are two inquiries which I would like to make. The first is, whether the language of this bill as drawn is intended to compel an unwilling party to submit to an examination of the examiner to be appointed by the court. Another inquiry I would like to make is, as to the intended scope of the phrase "medical expert testimony" as used in the motion of Brother Libby. Whether that is intended to include surgery, men who are proficient in that matter or any other specialized department,— whether the term "medical expert testimony" is intended to be broad to include all those.

MR. LIBBY: The broadest terms. The medical schools teach surgery as well as medicine, and also physiology and anatomy. The surgeon is no less a medical expert because he makes a specialty of surgery. There is one question which has been asked and which, I think, should be considered professionally, and that is whether it should compel the expert appointed by the court to file a written report so that both sides can examine it before the time of trial. It seems to me that might be important, and I don't know as the bill does provide for that, but that can be provided for readily in the bill.

PRESIDENT BAKER: The Chair will state that an examination of the bill does not disclose any provision in regard to that subject.

MR. WILFORD G. CHAPMAN: Mr. President, I trust I may be pardoned for saying another word and taking a much larger part in this discussion than I had any idea of taking; but I wish to say that no one in this

room or at this Bar has any greater respect for Justice Emery than have I—admiration for his learning and respect for the man; but even Justice Emery might propose something that would bear criticism, and the criticism that I make is intended to be made with the utmost respect and deference. Now, if this expert was constituted a court whose decision would be final, or a jury who would find the fact and whose decision would be final, the principle would be correct; but to limit suitors in the right of introducing any evidenee that is pertinent to the case or in any way throw the burden against one side of the case and in favor of the other, taking the risk of a prejudiced expert, which risk I believe to be great, is a question of such doubtful wisdom that it can do no harm to let the matter remain in abeyance until another session of the legislature.

PRESIDENT BAKER: The question before the Association is upon the motion of Brother Libby. That motion is in effect that this Association give its approval to the principles of this bill so far as it applies to medical expert testimony, in the broad sense of medical jurisprudence, but not otherwise, and that the provisions of the bill whereby power is given to the court to limit the additional witnesses to be called by either side be not approved. I believe I have correctly stated your motion, Brother Libby.

MR. LIBBY: And that the bill should also provide for the filing of a report by the expert.

PRESIDENT BAKER: You make that as a part of your motion?

MR. LIBBY: Yes, I am willing to make that a part of my motion, and that the medical expert appointed by the court should make a written report so that each party can examine it before going to trial.

PRESIDENT BAKER: The Association hears the amendment to the motion offered by Brother Libby. The question is on the adoption of the motion as amended.

A division was had and the motion was agreed to by a vote of 17 for, to 15 against.

PRESIDENT BAKER: The next topic upon the program is, "Shall Maine aid in the passage of uniform laws relating to negotiable instruments, divorce and sales?" And Brother Libby of Portland, has been asked by the Association to open discussion upon that subject.

MR. CHARLES F. LIBBY of Portland: Mr. President and Gentlemen of the Association, in the first place I want to apologize for talking so much this afternoon, but I will say that it is more by accident than by design that I have done it. The very way in which this question is put shows me that there must be a misapprehension on the part of the Bar of this state as to why uniform bills have been presented for their consideration and that of the legislature; and I don't think I can answer it any better than by reading the act under which two other gentlemen and myself were appointed commissioners from this state, and then I think you will see that the state has committed itself to

the question of attempting to evolve uniformity of laws in connection with other states on many important subjects. That is to be found in Chapter 138 of the Acts and Resolves of 1895, and I beg you to notice what the state has done on this subject.

"Section 1. Within thirty days after the passage of this Act the Governor shall appoint by and with the consent of the Council three commissioners who are hereby constituted a board of commissioners by the name and style of Commissioners for the Promotion of Uniformity of Legislation in the United States. It shall be the duty of said Board to examine the subjects of marriage and divorce, insolvency, the form of notarial certificates, descent and distribution of property, the acknowledgment of deeds, execution and probate of wills, and other subjects; to ascertain the best means to effect an assimilation and uniformity of the laws of the states, and especially to consider whether it would be wise and practicable to join with the other states of the Union in sending representatives to a convention to draft uniform laws to be submitted for the approval and adoption of the other states, and if so, to act as such representatives from this state, and to devise and recommend such other course of action as shall best accomplish the purpose of this Act."

I would like to know under what commission the commissioners who have been laboring for the last ten years, have been acting, if not the direct commands of this state to co-operate with the representatives of the other states to produce laws which shall be such as may be adopted to bring about the results set forth in this Act, which is uniformity of legislation.

Now, gentlemen, why is uniformity of legislation on certain subjects needed? On all commercial subjects there is nothing of a local character. They are as broad as this country's territory is, and there is no more reason on a purely commercial subject why the law of one state should differ from the law of another than there is why the complexions of the people of one state should differ from the complexions of the people of another state, or the style of their dress or anything else which is a minor consideration in life. On certain subjects there is every reason why the business of this country admits that minor differences should be eliminated from the law. On other subjects local policy has a right to step in and be considered. Now, what are the subjects that for the last ten years have been occupying the attention of the representatives of thirty-two states meeting in convention? They are largely and purely commercial subjects, excepting the question of divorce, upon which I shall touch in a few moments.

Can any lawyer suggest why it is any advantage either to the lawyer as such or to the business men of this country that there should a conflict of laws in minor matters relating to business subjects? Take the first Act that has been hanging here before the legislature for so many years, the negotiable instruments act, the mere instrument of commerce, the instruments which know no state lines and which in business circles are sent from one state into another.

In the first place, I want to call your attention to the class of men that have been trying to do this work, because I think there is a general feeling that it is a sort of junketing party, a party of men who have been using the printing presses of the country in bringing themselves

more or less into notice. In the two acts which are the last two acts which have been presented, you will find the draft of an act to make uniform the law of sales of personal property, something that has no local peculiarities, something that enters into the general law of commerce, and something which can be considered devoid of local feeling. I had hoped that some of you gentlemen would take interest enough in this subject to see whether this is a good piece of legal work and whether it is worthy of consideration and worth anything. But before I do that I want to call your attention to the names of a few of the men who have been engaged in this work to see if, as lawyers, you think their opinions and their continued labor resulting in a bill is worthy of attention. I will speak only of a few of them, the more prominent.

Take California, represented by Charles Monroe, who was born in the State of Maine and who now is a prominent judge in Los Angeles, a most agreeable man whose acquaintance you will all be able to make at the next meeting of the American Bar Association in Portland the coming summer, as he takes great interest in the meetings of that Association.

Colorado. The names there are all of prominent lawyers.

Connecticut. Talcott H. Russell of New Haven, one of the leading lawyers of the state; Walter E. Coe, a younger man, but a very bright attorney and a growing man in his profession; Earliss P. Arvine, a man I should say sixty years of age, a well known and a prominent lawyer in that state.

District of Columbia, represented by Aldis B. Browne, F. L. Siddons and R. Ross Perry, all prominent lawyers.

Georgia. Peter W. Meldrim—I suppose there is no man in our profession that stands higher in the state of Georgia than Peter Meldrim, former mayor of Savannah, and the one who defended the former resident of this state in the great suit where extradition took place from Canada, which you will all recall.

Massachusetts is headed by James Barr Ames, Dean of the Harvard Law School, a man who is now preparing a book on partnership, another subject that does not recognize state lines; Louis D. Brandeis, who has appeared before one of the committees of this legislature, and a man who for his age, I suppose, is one of the most prominent at the Massachusetts Bar; George E. Gardner, who I believe, was the former Dean of the University of Maine Law School, and who has since moved to Boston. He has also been Assistant Attorney General of Massachusetts.

Minnesota. Rome G. Brown, one of the men at the head of the Bar in that state; Frederick V. Brown, who is an ex-judge of the Supreme Court of that state; John D. O'Brien, who has been a prominent factor in the life insurance investigation, who accepted the office of commissioner of insurance and who has done very valuable work in trying to remove some of the evils that have grown up in the practise of some of the life insurance companies.

New Jersey. Woodrow Wilson, President of Princeton University; John R. Hardin and Frank Bergen are both prominent lawyers in that state.

New York. E. W. Huffcut, who is Dean of the Law School of Cornell University, and Charles Thaddeus Terry who is, I believe, Dean of the Columbia Law School.

I mention these names to give you an idea of the

character of the men who are engaged in this work, and to show you that it is not a junketing party. If I ever had any three days of hard work, morning, afternoon and evening, it was when I got into that conference on uniformity of laws, and if there ever was any accurate and well considered work done it is represented in the bills that have been recommended by this conference of commissioners on uniformity of laws that has been pending so long here in this legislature.

Now, the bill on negotiable instruments has been adopted by twenty-eight states, by Congress, and by the territory of New Mexico. What does that mean? It means that thirty odd judiciary committees have gone over that matter. There are thirty different Bar Associations represented on that commission, and I find that the Bar Associations in a great many of the states act in connection with these commissioners in trying to get the uniformity of laws which have been so much needed. In Pennsylvania the Bar Association has always taken strong hold of the matter and helped it along. Now, I am not going to take up your time, gentlemen, to tell you about the judicial work and the legal work which is represented in that negotiable instruments bill which is founded upon the English Act, and concerning which the English Chancellor wrote to our conference saying he considered it would be the greatest advance that had been made by the profession within the century if it were adopted, that it is a piece of work that is entitled to the consideration of the members of the Bar of every state.

You may think that I have a considerable pride of opinion about this work, but it is not my work, gentlemen. It is the work of commissioners from thirty-two states of this Union, and it is work which, if

you will just look at the preface to these two bills you will see how carefully it has been done. In order that you may appreciate what has been done, I will read the preface:

"The original draft of this act was prepared in 1902-03 by Professor Samuel Williston, of Cambridge, Massachusetts, at the request of the commissioners on Uniform State Laws in National Conference. It was printed in the summer of 1903 and sent with a request for criticism to teachers of the law of sales and to other experts on the subject. Some criticisms were received, and with the light of these criticisms and their own further reflection the draftsman presented to the conference of commissioners on Uniform State Laws, at its meeting at St. Louis, September 22nd, 23rd and 24th, 1904, a number of suggested amendments."

"The draft was then gone over carefully, section by section, by the conference. Doubtful points and changes in wording were discussed and voted upon. The draft was then recommitted to the committee on commercial law, with instructions to embody the changes adopted by the conference and to present a revised draft at a meeting of the conference in August 1905."

"Another draft was presented in accordance with these instructions at a meeting of the conference at Narragansett Pier in August 1905. This draft included for the first time a number of sections on the transfer of property by means of documents of title. These sections are numbered Sections 27-40 in the present draft. Because of these sections it was thought best once more to recommit the draft."

"At a meeting of the conference in St. Paul in August

1906, the following draft was adopted and recommended to the legislatures of the several states for passage."

Now, gentlemen, there are pending before this legislature the two last bills, a draft of an act to make uniform the law of warehouse receipts and the draft of an act to make uniform the law of sales. The act to make uniform the law of warehouse receipts is not a subject of such vast importance in this state as it is growing to be in other states. Mr. Reade who co-operated with us and Mr. Barry Mohun, the Attorney who gave his whole time to this subject in Washington, was with the conference during the preparation of that act, the history of which is fully set out in the preface to that work, showing the care with which the work has been done; and it has been with the assistance of the Bankers Association and the Warehousemen's Association and as good lawyers as exist in this country that these acts have been prepared.

Now, what should be the attitude of the State of Maine and of the members of the Bar of the State of Maine towards this undertaking? As an individual I have no more interest than any other member of my profession; but I know something of the value of the work that has been done, and I believe that it is in the interest of the great commercial bodies of our country that the law on commercial subjects should be brought into a homogeneous state, and that the minor differences—for they are mostly minor—should be made more uniform, —minor differences that have grown up from one body of men deciding at one time in the history of the commerce of the country a particular point of law in one way and later by another interest presenting it anew to another body there will of course be minor differences grow up. It is only those minor differences that should be eliminated in

order to give us what we want. And why do we want it? We want it in the interest of the citizens of this great republic, not in the interest of the lawyers, although it is a great advantage to any lawyer to read any of these acts and to see with what sagacity, with what success and with what clearness lawyers have spoken on subjects with which they are familiar both from daily practise and from the theoretical side.

I think I am entitled to ask the co-operation of the Bar of Maine in bringing about this highly desirable result. In bringing this matter to the attention of our legislature I have felt myself almost isolated—I have felt that I was going before a judiciary committee of this legislature and urging upon them something from my own individual judgment, from my own private opinions that I entertained, inasmuch as I had been somewhat instrumental in bringing about a result. And it seems to me when that work has been done and well done, the attitude of the State of Maine should be to consider it respectfully, to study it and see if there is any reason why the law should not be made uniform. I cannot do this thing alone. The negotiable instruments law was recommended by the last judiciary committee, was passed through the House and held up in the Senate. I had done what I thought was my full duty when I came before the judiciary committee and explained that law and called attention to the minor points in which it differs from the decided cases in this state; and I felt that having obtained a favorable sentiment upon the matter before the committee that the lawyers of the legisl[illegible] would attend to it and see that it received fav[illegible] consideration. I cannot be expected to come h[illegible] lobby for the matter. I represent the [illegible]

which I have attempted to do, but it does need earnest support, and it does need earnest work on the part of the members of our Bar Association who are interested in the progress of the law and putting the law on a firm and desirable footing with reference to the great business interests of this country, and it is important that lawyers should understand the situation.

Now, I should weary you and you would feel that you had had too much Libby, as we get too much Johnson sometimes, if I should undertake to take up these acts, section by section, and explain them. There are many matters which are important and yet are minor matters. For instance, the State of Maine and the State of New York many years before the full bearing of commercial subjects had been considered, took the position that a pre-existing debt was not a valid consideration for the transfer of a negotiable promissory note, and therefore that it was open to equity. The English courts and the Supreme Court of the United States and the courts of all the other states which have spoken about the matter have taken the opposite view. This act represents the dominant law of the different states. In the year 1880 I carried a case up to the Supreme Court to ask them that in face of the overwhelming authority of the great commercial courts of England and in this country, that they should change their position. Judge Libby drew the opinion. He says the counsel are undoubtedly correct in stating that that is the dominant law in this country, but, in view of the fact that we have already decided it differently, we think it is better to adhere to our previous position and let the legislature change. This gives the legislature the opportunity to bring in harmony our law on commercial subjects with the laws

of the other states. Now, is there any reason why we should not follow the laws of the other states? Is there any reason why any negotiable instruments act should not be adopted?

This negotiable instruments act was reported in 1896, adopted by all these states, passed the examination and approval of all the judiciary committees, and yet has not been enacted by the State of Maine, and I felt an embarrassment going back to meet my associates year after year, and being asked, "What is the trouble with the negotiable instruments act in the State of Maine?" I have frankly expressed to them that I did not know what the trouble was excepting the natural inertia of our lawyers of the different states to carefully examine and determine for themselves what the value of that Act is. I know that you are busy men, and I know that the legislature is crowded with work, and the trouble is that we cannot get anybody to take time to examine carefully these documents; and yet, this State legislature has directed the Governor and Council to appoint these commissioners, and has directed that this work of making uniform the laws of the various states shall go on in co-operation with the other states. Is there anybody that needs to be converted to the proposition that on these commercial subjects there is need of uniform laws? If there is, I should be glad to further discuss that proposition. But it seems to be so plain to me, and it seems to be so plain to the business man and to the banker that every lawyer must recognize that there are subjects concerning which it is a great advantage to the lawyer and to his client that the laws of the various states should be uniform. One of the largest gatherings of the banking association of this state which has ever

been held, after an examination of that law appointed a special committee to come before the legislature and ask the legislature in the interests of the business men of this state to pass that law. Twice they have been up here. I have come to the conclusion, gentlemen, that I am not a persona grata with the legislature of the State of Maine. I have seriously considered whether some man of more influence and greater ability and more persuasiveness could not be appointed by the Governor of this state to accomplish what it seems to me is a great and important work. And I will say frankly to you that I shall be very glad to resign my place on this commission and give it to any man you may nominate who can do that work and accomplish something so far as the State of Maine is concerned; but while I am commissioner it becomes my duty to appeal to my associates, to appeal to the legislature, to appeal to my brother lawyers and ask whether it is not worth while to help along this work which the state has requested to be done. So I think I may accept the position that the state has ordered this, and the state is committed to this if it is good work, and if it is not good work then it is like any other work—throw it aside and put somebody in who can do you good work, and then treat the matter with the consideration which its importance demands.

Now, without taking much more of your time, I wish to speak for a moment on the matter of divorce. This bill on divorce did not emanate from the conference on uniform laws but an independent body. Early last year President Roosevelt saw fit to call attention to the importance of passing such laws as would check the growing evils in divorce matters in practice, and discussing it from a certain legal point of view it would seem as

if the only remedy is in having uniform laws throughout the several states. Acting on that appeal, the Governor of Pennsylvania issued a circular letter to the governors of the other states, asking them to send commissioners to meet commissioners of other states in joint convention to consider the question of uniform divorce laws. Representatives to that congress met in February last in Washington, and there were 111 representatives from the different states, many of them being the same men who have been at work on the uniform laws under the state commission, as, in this state, the Governor saw fit to appoint the same commissioners that were the regular commissioners on the uniformity of laws. Pennsylvania did the same thing and a great many of the other states did the same thing, so that there were in that convention many of the commissioners who were dealing with this same subject. Now, for three years the commissioners on uniform laws have been dealing with the subject of divorce, but they found it an exceedingly difficult matter, and they had reported to the states two minor acts, one relating to the causes of divorce, and the other attempting to make more careful provision for notice to the respondent. I reported those bills to our legislature and explained it all, but nothing came of it.

Now, gentlemen, I have taken more of your time than I intended, but I have done it because I want you to be interested in this work. I want you to feel that so far as your representatives who have gone out from Maine were concerned, they have not reported back merely their individual opinions, but they have reported back the consensus of opinion of the eminent lawyers who have met in convention from thirty-two states to try and carry out the purposes of the act passed by the legislature of

the State of Maine, and also of the other states, which is working towards uniform laws on certain subjects. If the legislature can feel that the great body of men who constitute our profession in this Association are disposed to look into the matter, I am sure they will take whatever time is necessary to see whatever of merit there is in these bills; and that I ask of you, gentlemen, not in my own behalf, but I ask it in behalf of the state and in behalf of the profession which we represent. (Applause.)

PRESIDENT BAKER: The question recurs, as stated in the program, item No. 8, "Shall Maine aid in the passage of Uniform Laws relating to Negotiable Instruments, Divorce and Sales?" The Chair will entertain any motion.

MR. HARRY R. VIRGIN of Portland: Mr. President, I move that it is the sense of this Bar Association that these bills as reported by the eminent gentlemen who have discussed them and prepared them, covering a good many years of work of the ablest representatives of our profession, should pass and become the law of this state. I have not had time to examine them carefully, and I doubt if I could do it in a long time, but I am satisfied by the presentation of the matter by Mr. Libby and the care and painstaking attention that has been given to these matters that they will accomplish what they are intended to accomplish, uniformity of legislation, which to my mind is one of the things most needed in this country to-day; and I am in favor of it from that standpoint.

PRESIDENT BAKER: Will we deal with each separately or take them altogether?

MR. LIBBY: The warehouse receipts bill did not apparently get into the enumeration, and that will make four subjects.

MR. VIRGIN: I should be glad to make that a part of my motion that we consider them altogether.

PRESIDENT BAKER: The question before the Association is that this Association give its approval to the bills on the four subjects, viz., Negotiable Instruments, Divorce, Sales and Warehouse Receipts.

The motion was unanimously agreed to.

MR. S. S. BROWN of Waterville: Mr. President, I would like to inquire before what committee these bills are pending.

PRESIDENT BAKER: The Chair understands that those matters are pending before the judiciary committee.

MR. BROWN: It seems to me that it would be a good idea to select someone to see that our views are presented to that committee.

MR. VIRGIN: I would suggest that there are four members of that committee present at this time.

PRESIDENT BAKER: It is suggested that there are four members of that committee present. Does the gentleman press his suggestion?

MR. BROWN: No.

PRESIDENT BAKER: The Chair begs leave to announce the committee to co-operate with the committees appointed by the Cumberland Bar, in the matter of the reception and entertainment of the American Bar Association at its meeting to be held in Portland during the coming summer. The committee is as follows:

Leslie C. Cornish,	Augusta.
Frederick H. Appleton,	Bangor.
Oscar F. Fellows,	Bucksport.
Joseph E. Moore,	Thomaston.
George C. Wing,	Auburn.

PRESIDENT BAKER: The next subject matter upon the program is item No. 9, "Should not the Reporter of Decisions state in concise form the points made by counsel, and the authorities cited to each point, so that the profession can see whether and how far the Court has met and answered them."

MR. BERTRAM L. SMITH of Patten: Mr. President, this is a matter of some importance to the members of the Bar and a great many have had to attend committee meetings and be absent from this room, and as the hour is getting late I would move that the discussion of this matter be deferred until the evening session.

The motion was agreed to.

HON. GEORGE H. SMITH of Houlton: Mr. President, I would like for every lawyer of the state who can do so, to be present when I take this matter up, for I am going into it in detail and shall let the lime-light right into the office of the Reporter of Decisions and what he has to do, and I should be glad to have every lawyer of the state present and hear what I have to say.

MR. BERTRAM L. SMITH: Mr. President, I am informed that there is to be some meeting in the Senate Chamber this evening, and as our program states that our evening session is to be held in the Senate Chamber it might be well for us to meet at this same place. And I move that we now adjourn until 7.30 this evening at this place.

The motion was agreed to.

EVENING SESSION.

The evening session was called to order by President Baker at 7.30 in the judiciary room.

PRESIDENT BAKER: The first matter to be taken up at this session is No. 9 upon the printed program. And it has been arranged that Brother Johnson, of Waterville, should say something upon this question, and I know the Association will be glad to hear from him.

HON. CHARLES F. JOHNSON of Waterville: Mr. President and members of the Maine State Bar Association: I have not made very extended investigation of this matter. I have had some talk with the Reporter of Decisions, and he made the request that he be allowed to first state his case, and in that I certainly acquiesce and yield to him.

PRESIDENT BAKER: We will be very glad to hear from Brother Smith, the Reporter of Decisions.

HON. GEORGE H. SMITH: Mr. President and gentlemen of the Bar Association: I am not a member of this Association but I am glad of this opportunity to talk face to face with some of the lawyers of this state in connection with a matter of more or less importance.

A short time ago, I received a letter from Mr. Baker, President of this body, stating therein the question which is now before this meeting and asking me to be present

and participate in the discussion, and also to notify Bro. Cornish, the Secretary of this association whether or not I would be present. I immediately wrote Bro. Cornish accepting this most courteous invitation, stating to him, among other things, that as in these days good men were being investigated I knew of no earthly reason why the Reporter of Decisions shouldn't be "investigated" as well as some other men whom our legislative inquisitors are now after, and so I am here in response to that invitation.

I am not much of a speaker, but in my rough and homely way I am going to turn the lime light into the office of Reporter of Decisions and state to you facts and conditions as I find them from actual experience. Probably there is not an office in the state that there is so little actually known about by the general public, lawyers included, as the office of Reporter of Decisions. And this condition I presume, has arisen from the fact that there has been no call for any information concerning the office and consequently the Reporter very properly has not deemed it necessary to volunteer information in relation to the same. But in connection with this discussion, I deem it necessary to lay before you facts and conditions as they exist in order that you may judge for yourselves whether or not I am justified in not stating the points and contentions of counsel and authorities cited, in the reports of cases decided by the Law Court.

First I want to dispel some of the halos and rainbows which have been hovering over the income side of the office for several years. My stenographer says that the only halos that she has been able to discover about the office since I have had it have been very largely composed of brimstone and tobacco smoke. Where the

brimstone comes from I don't know as I never use sulphurous language, and as for the tobacco smoke, it floats in through the office windows from the street I presume. Previous to my appointment as Reporter, it was strongly intimated to me by several gentlemen that the office was probably worth much more than the salary attached to it. Estimates as to the total income of the office per year were from $3,500 to $4,000 or from $1,000 to $1,500 more than the salary. No one undertook to say from what source this extra income was received. It was simply guess-work with but mighty little foundation to rest upon as I soon discovered. And right here I am going to tell you just what the gross income of the office is per year as I have found it. The salary is $2,500 per year. The West Publishing Company pays the Reporter $200 for copies of the cases in each volume of Maine Reports, and as practically only one volume of Maine Reports is issued each year, $200 per year is the whole amount paid by the West Publishing Company. In addition to this, the Reporter receives each year for copies of opinions furnished lawyers a sum not exceeding $50 per year. In fact in the little more than two years I have held the office I do not think I have received $50 a year for such copies but we will call it that. This then makes the total gross income of the office $2,750 a year. I now wish to call your attention to the other side of the equation. The State of Maine does not appropriate one single solitary cent for the Reporter — salary of course excepted — for any purpose whatever, not one cent for travelling expenses, not one cent for office rent, not one cent for clerk hire, not one cent for stationery, not one cent for the hundred and one things that all of you know are absolutely necessary in running

an office. All the expenses of the office have to be borne by the Reporter. More than this, the state does not appropriate a dollar for printing, binding, publishing and selling the reports. The Reporter himself, as the law stands, must furnish all the money necessary to pay the cost and expense of printing, binding, publishing and selling the reports and take his chances of ever getting his money back unless he can find some publisher, as I so far have succeeded in doing, who is willing to assume that burden and risk. And in addition to this, the law requires the Reporter to pay to the State all profits arising from the sale of reports and advance sheets. If the Reporter travels on a pass he cannot even charge up mileage to the state because the state does not allow him any thing for travelling expenses! The state provides no office for the Reporter in which to do his work or to keep the ever increasing mass of papers which flow into his hands in a pretty steady stream the year around. In short, the state simply gives the Reporter a commission which authorizes him to do the work, draw his salary and pay the bills.

Now what are some of the necessary expenses in running the office? The Reporter as a matter of absolute necessity must have a stenographer and typewriter operative — especially the latter, for there is a vast amount of typewriting to be done in the course of a year in connection with the work of reporting cases. Also it is absolutely necessary to have some person to assist in the work of proof reading for it takes two persons to handle proof properly,— one to read aloud and the other to watch the proof and make the corrections. No person competent to typewrite and assist in proof reading can be had for less than $8.00 per week, and this

expense as the law stands must be borne by the Reporter. The matter of stationery alone is quite an item. I have not kept any accurate account of just how much it costs, but I am going to guess that the stationery, typewriter ribbons, and those things that are necessary in running an office cost somewhere about $75 a year. Now, don't misunderstand me. Don't understand me to say that I am paying out $75 a year, because so far I have not. It has happened on a few occasions that Andrew Carnegie has sent me a little paper, while John Wanamaker has furnished me a few envelopes and J. P. Morgan has given me a few lead pencils! The information contained in this last statement is given to you in strict confidence. Please don't repeat it for if you should some of these legislature inquisitors might hear about it and then they would straightway appoint a committee and start an investigation and my benefactors would forever cease! (Laughter)

It takes about 1300 copies of Maine Reports to supply the demand, possibly a few more or a few less. An edition of a volume of Maine Reports consists of 1570 printed copies, of which 1300 are bound up, for, as before stated, it takes about 1300 copies to supply the ordinary demand. The remaining 270 copies remain unbound until such time in the future as there may be a demand for the same. These reports, as you all know, are sold in the state at $1.75 per volume. For copies sold out of the state I am informed that the sum of $2.00 per volume is received. I am also informed that considerably less than 100 volumes of an edition are sold outside of the state. As we have one of the best and ablest courts in the country, it may be a matter of surprise to some of you that the demand for Maine Reports

outside of the State is not larger. I suppose this may be largely accounted for from the fact that all of the Maine cases go into the "Reporter System" which covers and includes all the various states. In this way members of the profession outside of the state get the Maine cases without being obliged to purchase the Maine Reports. As previously stated, I furnish the West Publishing Company copies of all cases that come into my hands. This is the only company to which I send cases. Other companies publish some Maine cases. I am told that they get their copies through the West Publishing Company. At any rate they do not get them from me and neither am I paid anything for the same.

I now want to call your attention to some of the duties of the Reporter and the work he personally must do. The person who thinks that the Reporter is simply a chore boy with nothing to do but lug opinions from the judges to the printer is mightily mistaken. The Reporter actually has something else to do besides wearing a pink in the lapel of his coat, smoking his pipe, and posing as a modern Solomon!

In reference to the duties of the Reporter, I want at this point to read to you a few excerpts from a letter written to me when I was first appointed by one of the ablest judges on the Bench in response to a letter I wrote him asking for suggestions. And I wish to state right now that I am under deep obligations to this Judge for the courteous and valuable assistance he has given me ever since my appointment, which, I assure you, I most highly appreciate. I refer to Mr. Justice Emery, the present Chief Justice. I read from his letter for the purpose of showing you what some of his ideas are in relation to some of the duties of the Reporter. "You

will need of course to verify carefully every citation by court or counsel, and your accuracy in this respect is most essential, and will give you your best reputation. This will be your great drudgery but it must be done." "You should call the attention of the Judge to any grammatical error in his opinion or his use of a word not authorized. Also if you know of any authority in point, not noticed by him, you should call his attention to it. In fine you are to be '*amicus curiae*' in the full sense of the term." "It will require great painstaking to get out clear, concise and accurate reports." And the learned Chief Justice is right, and I have tried to do the things he suggested but as you will readily see these few things alone must necessarily take a great deal of time. Some of them I shall discuss a little later. The point that I am making is that there is a vast amount of work to be done by the Reporter outside of the consideration of briefs, work which must be done regardless of briefs. And please remember that there is but one Reporter and all the work must be done under his personal supervision and pass under his own eye. He is getting out a printed volume which is to be a permanent record and he and all others interested in it want the work fairly well done. The Reporter wants it to be a credit to the Court, to the profession and to himself. It is work which cannot be rushed through at railroad speed.

I now call your attention to the fact that a pretty large amount of work, each year, is done by the Law Court. I have been Reporter for about two years and eight months. In that time 387 cases have come to me from the Law Court, of which 87 were what are known as "rescript cases," while the remainder 302 were "opinion cases" intended to go into the books. You

will notice then that "opinion cases," so far, have been coming along at the rate of a little better than 100 a year. And accompanying these cases are two briefs in each case probably ranging in length anywhere from 3000 words in each brief up to the briefs in the famous Chandler Will Case which contain over 1600 printed pages. This then means that if the Reporter has got to handle briefs as suggested by the question under discussion that when the Reporter comes to consider these 100 cases that he must also consider in connection with them 200 written briefs making in all 300 written documents to be studied and digested as a part of the work in getting out the reports of cases for one year alone. Well, gentlemen, the number of days in a year in Aroostook county are 365 1-4, just the same as they are down here. We have tried all sorts of schemes up there to get the days lengthened out, but that task so far has been beyond us. We did at one time have a man in the county, a county commissioner, who succeeded in getting 32 days into one month, but when he died that secret died with him. (Laughter) The Reporter can only do about so much work a day as he is subject to the laws of weariness same as all other flesh, and if as a part of his work he is to condense and abbreviate these 200 briefs so as to "concisely state the points therein with authorities cited," how soon do you expect to have the cases appear in the reports? Bear in mind what I have already stated that there is but one Reporter and that he personally must attend to all this work.

The manuscript opinions come to the Reporter in type-written form. None of them are errorless from a printer's standpoint, or if there be any such I do not now recall them. Of course the greater part of these errors are

harmless from a legal standpoint, but they don't look well in print and are exceedingly annoying to the writers, the readers and to the Reporter. The judges do the best they can to correct these things but they are all very busy men and can't waste very much time in hunting up minor errors. They have to trust much to their typewriter operatives and—well, some typewriter operatives are simply artistic in the art of making mistakes! Therefore, the first thing the Reporter has to do is to go through these manuscripts, pencil in hand, watching out for misspelled words, wrong words, misplaced marks of punctuation, misplaced letters, words begun with capitals when they should begin with lower case letters and *vice versa*, and correct all such errors when he finds them. And it is surprising how many such errors are found when manuscripts are examined with an eye single to their detection. They bob up in the most unexpected places and are oftentimes exceedingly difficult to detect, and not infrequently escape detection. But no matter how fair on its face a manuscript may seem to be, still it must be critically examined each and every word and punctuation mark, and this is equally true of the manuscript prepared under the Reporter's own supervision. In dictated work, *idem sonans* is a fruitful source of errors. Also the failure to understand legal phraseology frequently results in errors. Now it does not take very much time to dig out one wrong punctuation mark and insert the correct one or to correct one misspelled word, but when you multiply these instances by hundreds you will discover that time rolls up like interest on a twelve per cent. note. You must correct these errors, for if you do not the printer will probably set the matter up just as written and then there is more

trouble for you when you come to correct the proof sheets. I recollect one manuscript opinion that came to me, and I think it was the worst piece of manuscript I ever saw. It bristled with errors, and when I got through with it with my lead pencil it looked as though it had had the black small-pox. Another thing that you especially have got to be on your guard against. I read an opinion a while ago and came to a sentence that didn't sound right. I read it over again and still it didn't sound right, and then I made the discovery that the typewriter had written the word "of" instead of the word "or." If that opinion had gone to the printer he would set it up "of," and if the error had not been discovered but had gone into the books I should have heard from somebody asking why I didn't scrutinize things a little more closely. And instances like the one I have just related are not infrequent enough to be called rare. I try to discover and correct all such errors, yet in spite of all I can do some of them get by me, and then when the volume appears they then show themselves with all the prominence of the small boy when a nigger minstrel troupe is parading the street. And then the Reporter dolefully sings, "The mistakes of my life have been many."

Next comes the making up of the case as it appears in the Maine Reports. What does it mean to make up a case? In the first place, the Reporter has got to study and digest the case. I think you will agree with me that no man alive can properly report a case until he has studied and digested the case and knows what is in it in order to make up a proper report of it. Now, how long does it take? I am rather slow, I will admit, in my mental processes, but I have had some cases where it

has taken me more than two days to study, digest and comprehend the case. How many times have you studied and reconsidered the same opinion over and over again where you thought it applied to a matter that you were interested in and you wanted to know and understand just exactly what that case contained, the exact point of the case, the exact theory advanced by the Court. I have to do that in every one of the hundred or more cases that come into my hands each year, and as you all are lawyers you can readily understand that that is hard work and that it takes a lot of time. Having digested the case you next proceed to make up the statement of the case. You have got to have some statement, and if you have any real pride in your work you want it done in fairly good shape. This statement should be plain, clear and concise and framed so that it can be readily and easily understood. This means close, careful work. It is a maxim with newspaper writers that "easy reading is hard writing." I try to make up the statement of a case so that any fellow who is as dense and dull as I am can understand it. And in some cases it takes me from a half a day to a day and a half or two days to get the statement in form so that it is satisfactory to myself. In other cases it does not take so long. Much depends upon the nature and character of the case. It is the general practise with all the judges to state all the material facts in the opinions, so I do not always make a statement of the facts, yet I do like to have my statement full enough so that it will give a fair idea of the case and the issue involved.

I will next consider the head notes or syllabus. It is the duty of the Reporter to prepare the head notes unless the judge drawing the opinion sees fit to do this. Three

of the present judges expect me to use their rescripts as head notes, and I am mighty glad to do this. The late Chief Justice Wiswell sometimes expected me to use his rescripts as head notes and sometimes he did not. Three of the other four judges write rescripts which they do not expect me to use as head notes and which are not intended for head notes. In their cases I prepare all the head notes. The remaining judge does not expect his rescript to be used as head notes, but sometimes he has very kindly helped me out by preparing the head notes in some of his cases. As a rule, however, I have so far prepared the head notes for the opinions written by four of the judges. This is close and exacting work and work that cannot be hurried. Head notes are supposed to express in concise form the exact point or points decided, no more and no less. This means that the Reporter must be familiar with the case. He must be able to state in brief and concise form the exact issues presented and decided by the case. He must do this by apt statements either formulated by himself or stolen bodily from the opinion. And as it is always easier to steal than to originate, I generally steal whenever there is an opportunity! But at best it is slow and time-consuming work. It cannot be hurried. Sometimes it takes me two days to construct a set of head notes that I think will pass muster. But at best I can rarely complete a task of this kind in much less than half a day. If any person thinks that building head notes for the work of another man is nothing but a little simple job of doing a few chores after supper by lantern light, that person wants to experiment with a few cases, with which he is not familiar, by striking out the existing head notes, without reading the same, and then construct some for

himself and note how long it takes and how much of a task it is. All cream contains butter but many a poor, unfortunate boy has discovered that it requires a good many arm-aching whirls of the churn-crank to induce the butter "to come," and besides that, it uses up a lot of valuable time which ought to be devoted to fishing! One of the judges has frankly told me that he did not think he could write head notes. He said he could write rescripts but that he had no experience writing head notes, but if he ever got time he intended to try his hand at head notes. The head notes that I have prepared may be crude and imperfect. I think they are. But they represent many hours of hard, close, mental labor.

Now, in regard to the verification of citations. I have not verified very many citations of counsel because I soon abandoned the idea of undertaking to report briefs of counsel, but as far as possible I have tried to verify every citation in the opinions. I want to tell you of some of the experiences I have had. The worst one I had was a Maine case cited in an opinion which I could not find, and I thought it was funny that I couldn't find a Maine case. I pulled down the volume that was named in the opinion but I couldn't find the case. I hunted a while longer and still I couldn't find it, and then I took my stenographer and we both hunted for the case for a long time but couldn't seem to find it. I examined the "Table of Cases" in Savage's Index Digest but the case wasn't there. I then made up my mind that I would find that case or die in the attempt. I have now forgotten the nature of the case but finally I took the Digest and turned to cases of a similar nature, and then began to take the books down one at a time, and after I had taken down a dozen or fifteen I found

the citation. The only thing wrong about it was that the name of the case wasn't right, the volume wasn't right and the page wasn't right. (Laughter.) I have had several citations that I have tried to verify and I couldn't find them, and I have written to the judges who drew the opinions and asked them to assist in the search, and every time I have received a reply saying that somebody had made a mistake. I can see now the necessity for verifying citations. It is necessary. And in view of the fact that such mistakes are sometimes made, it is necessary to examine every citation so far as it is possible so do so. I will here state that if I am to give the citations made by counsel in briefs that I doubt if there is a law library in the state where all such citations can be verified.

I will now call your attention to the matter of proof reading. Printers, like myself and all the rest of humanity, make mistakes. Proofs may contain wrong words, mis-spelled words, substituted words, misplaced letters, inverted letters, wrong letters, and "e" used where the letter should be "c," and "s" standing on its head, a letter apparently highly intoxicated, and so forth and so on, and sometimes words and phrases which should appear are wholly left out. Did you ever do any proof reading where it was necessary to have the printed work as nearly errorless as possible? Your stenographer reads the manuscript aloud and you listen while she reads, with your ears straining to catch each and every word as it drops from her lips, and noting whether its form is singular or plural or whether it is "of" or "or" or what not, and with your eyes glued to the proof watching out for errors of all sorts and kinds, and at the same time trying to keep run of the sense of

each and every sentence and paragraph as read. Now, after an hour's experience of this kind, if you are anything like me and there are no Sturgis Commissioners or ministers lurking around, you will go out and sip icewater and recite Scripture, and for the next hour you won't feel very much like tackling any very heavy work! Here is a little illustration of what sometimes happens when matter is set up. In a note case this expression was used: "There was an utter failure of consideration." When the proof came back to me it read, "There was an utter failure of compensation." The resemblance between "consideration" and "compensation" is pretty close and so the type-setter got it "compensation." The error was not at all fatal, but you would have thought that the Reporter was pretty careless if he had not detected it. Some such errors get by everybody and that can't be helped. An errorless volume of any kind probably has never been published. But you must do your best to minimize the number of errors, and all these things take time and the first thing you know the day is gone and you have not accomplished half as much as you expected when you started in.

It is no small task to make up the various indexes of a volume of Maine Reports. It takes me from four to six weeks of good, solid work to prepare such. It is work which must be carefully done, especially that portion which tells you briefly what the Court has said and done in the various cases reported. I try to prepare the indexes so that they will be of value to the profession. Chief Justice Emery once said in my hearing that "the practical value of a law book depends upon its index," and he was just right about it. And when I am working on an index I try to keep in mind the very idea advanced by the Chief Justice.

Then again the Reporter is supposed to attend the terms of the Law Court, of which there are three each year. The present Reporter has not attended them all, but I apprehend that he will in the future because he discovered at the last term of the Law Court held in Augusta, that the new Chief Justice knows how to work the Reporter as well as everybody else around him!

Also there is quite a large amount of correspondence connected with the office which must be promptly attended to. This is a minor matter of course, yet all such things take more or less time.

I now come to the subject of briefs and I have been a mighty long time getting to it. First I call your attention to the fact that these are the days of stenographers and typewriters and that there is a tendency on the part of everybody whether brief makers or letter writers to write at far greater length than was the custom in the days when all writing had to be done with the old-fashioned pen handle. Under the stimulating influence of stenographers and typewriters documents of all kinds have mightily increased in length and condensation and abbreviation will soon be classed among the lost arts. It is so easy to dictate to our stenographers that when we get at it we are apt to spin things out instead of contenting ourselves with a few plain simple statements covering the matter as we used to do in the pen and ink days. We all do it; everybody does it. But mind you I am finding no fault about these things. It is a right that every person has to write long or short just as he pleases. I am simply calling your attention to the fact that it takes more time and more effort to go through a document of ten pages and condense it than it would if that document contained only five pages.

Briefs come in all sorts of shapes and sizes; some are printed and some are typewritten; some are on long paper, some on short paper. But counsel have a right to arrange their briefs in the form they see fit and according to their own ideas. They are under no obligation to consult the Reporter in relation to the same and it is none of his business what they do whether the briefs be long or short, printed, typewritten or hand written.

When I was notified that this Association would at this meeting discuss the question "Should not the Reporter of Decisions state in consise form the points made by counsel and the authorities cited to each point, so that the profession can see whether and how far the Court has met and answered them," I began a somewhat systematic examination of briefs in my possession so that I might be able to present to you a few facts and figures in relation to the same. I took from my files fourteen different cases for the purpose of examining the briefs. I stopped with the fourteenth case because I was too busy and too tired to examine much further. I did not pick out these fourteen cases, but I took them down, hit or miss, as I simply wanted to get a fair average. I counted the number of pages in each brief. Then by a little counting and figuring I ascertained the probable average number of lines on each page. In the same way I ascertained the probable average number of words in each line. In this way I ascertained approximately the number of words in each brief. I will now give you the results of my examination.

Case No. 1. Plaintiff's brief 33 printed pages, 7,876 words.
Defendant's brief 12 printed pages, 3,360 words.
Making a total of 11,236 words in that case.

Case No. 2. Opinion 6 pages.
Plaintiff's brief 12 pages, 3,120 words.
Defendant's brief 30 pages, 6,000 words.
Making a total of 9,120 words.

Case No. 3. Opinion 19 pages.
Plaintiff's brief 104 pages, 26,000 words.
Defendant's brief 114 pages, 39,672 words.
Making a total of 65,672 words.
Number of citations of authorities in plaintiff's brief 87.
Number of citations in defendant's brief 40.

Case No. 4. Opinion 28 pages.
Plaintiff's brief 23 pages, 7,280 words.
Defendant's brief 77 pages, 21,156 words.
Total 28,436 words.

Case No. 5. Opinion 19 pages.
Plaintiff's brief 96 pages, 29,952 words.
Defendant's brief 94 pages, 25,884 words.
Making a total of 55,836 words.

Case No. 6. Opinion 5 pages.
Plaintiff's brief 48 pages, 16,800 words.
Defendant's brief 62 pages, 14,880 words.
Making a total of 31,680 words.

Case No. 7. Opinion 8 pages.
Plaintiff's brief 11 pages, 3,080 words.
Defendant's brief 8 pages, 2,400 words.
Making a total of 5,480 words.

Case No. 8. Opinion 7 pages.
Plaintiff's brief, 28 pages, 8,400 words.
Defendant's brief 39 pages, 11,700 words.
Making a total of 20,100 words.

Case No. 9. Opinion 12 pages.
Plaintiff's brief, 88 pages, 26,400 words.
Defendant's brief 38 pages, 11,400 words.
Making a total of 37,800 words.

Case No. 10. Opinion 4 pages.
Plaintiff's brief 13 pages, 3,900 words.
Defendant's brief 14 pages, 3,700 words.
Making a total of 7,600 words.

Case No. 11. Opinion 4 pages.
Plaintiff's brief 16 pages, 5,000 words.
Defendant's brief 16 pages, 5,000 words.
Making a total of 10,000 words.

Case No. 12. Opinion 22 pages.
Plaintiff's brief 105 pages, 21,000 words.
Defendant's brief 11 pages, 3,300 words.
Making a total of 24,300 words.

Case No. 13. Opinion 8 pages.
Plaintiff's brief 27 pages, 9,760 words.
Defendant's brief 12 pages, 4,200 words.
Making a total of 13,960 words.

Case No. 14. Plaintiff's brief 19 pages, 4,750 words.
Defendant's brief 9 pages, 2,100 words.
Making a total of 6,850 words.

In those fourteen briefs the total number of words if I am correct in my figures is 328,430, an average of 23,459 words per case, or about 11,000 words per brief.

Now let me ask you in all seriousness, how long would it take the Reporter to take the briefs in those fourteen cases alone, study and digest them and then proceed to put them in concise form such as called for by this question, together with citations of authorities? If the Reporter is going to consider briefs and make a condensed statement of the same giving the various points made together with the citations of authorities, then he must study each and every brief until he has thoroughly digested it and caught the spirit of the brief maker. If he does not do this, then he can make no intelligent condensation of the same. To condense and at the same time clearly present the points made so as to do justice

to the brief maker requires careful and intelligent work. Again, I inquire how much time do you think work of this kind will require?

I now especially call your attention to case No. 3, Marsh *vs.* Great Northern Paper Company, decided a short time ago. I know that Mr. President Baker will pardon me for referring to this case. In that case Mr. Baker as counsel for the plaintiff filed a typewritten brief of 104 pages containing, according to my estimate, 26,000 words, and 87 citations of authorities as I recollect. Mr. Baker never puts a word into a brief unless he deems it necessary. He never makes a citation unless he considers it applicable. He is one of the most careful brief makers in the state. How long do you think it would take the Reporter to study and digest that brief and then state the points made therein in a concise manner together with the authorities cited in support thereof? Neither Mr. Baker nor any other lawyer wants the Reporter to "tinker" with his briefs unless the work is to be done in a proper manner. The defendant's brief in the same case contains 114 typewritten pages which I estimate to contain between 39,000 and 40,000 words and about 40 citations of authorities. This brief was prepared by Hon. Charles F. Woodard who is now a Justice of the Supreme Judicial Court. He too is a lawyer who puts nothing into a brief unless he thinks it belongs there. How long would it take to study and digest that brief and get the points made stated in concise form? You say.

I can digest and condense any brief that is made but I must have time to do it. If I am to do the work on briefs as suggested by the question under discussion, how soon do you expect me to get into your hands the 100

opinions a year that are coming along? The judges take their own time in getting out their opinions. There is no time limit placed upon them. But the Reporter as I understand it, is expected to get these opinions into the hands of the profession within a reasonable time after they have been announced.

The high water mark in brief-making so far is in the Chandler Will Case. Somebody said to me that it was nothing but a question of fact involved in that case. I don't know how that is for I have not yet read the case; but one of the attorneys engaged in that case told me that there were several questions of law raised. The proponents brief in that case consists of 567 printed pages, a volume nearly as large as a volume of the Maine Reports; the appellant's brief consists of 985 printed pages, and makes a volume two-thirds as large as the Revised Statutes of Maine; and the maker of that brief has arranged his citations of authorities in a table in the last part of the volume, and he cites in support of points made by him 225 cases. By the way, this Chandler Will Case is not included in the computations which I have made and to which I have previously referred. Now, let me ask you if I am to write out in concise form, according to the language of this question, the points made in those briefs of 1600 printed pages, how long do you expect it is going to take me? I should venture to say that to do the best I could that I could not do it in less than a day and a half!

It has been suggested that the "Lawyers Reports Annotated" would be an excellent model for mé to follow. They would be an excellent model; nothing better. I have looked into the system a little and I want to tell you what I discovered. I took two Maine

cases which I have reported and both of which appear in the L. R. A. I examined the original briefs in my possession, and compared them with the L. R. A. work. In the first case the plaintiff's brief in my possession contained 41 citations. The L. R. A. gave 29 of the citations. The defendant's brief contained 35 citations and the L. R. A. gave 9 of them. I also found that the L. R. A. gave 4 citations in this brief which I did not discover in the copy of the brief in my possession. I assume that these were edited in afterwards by the brief maker when he furnished copy to the L. R. A. people. I do not recall the number of pages in these briefs, but in the L. R. A. they were condensed into about half a column each.

In the second case the plaintiff's brief contained 12 pages, 3600 words, and 39 citations. The L. R. A. condensed this brief into half a column and gave 23 of the citations. The defendant's brief contained 18 pages, 5400 words, with 21 citations. This brief in the L. R. A. work was reduced to half a column and only 14 of the citations given.

Now what does this mean? It means that the learned editors of the L. R. A. read each and every citation in all of these briefs and then gave only such citations as in their judgment were applicable and to the point. I will add that neither of these cases appeared in the L. R. A. until nearly a year after I had sent them to the West Publishing Company. Now does any judge or lawyer expect that the Maine Reporter — one lone individual — to read and study all the citations given in briefs and then determine what are applicable and what are not applicable and elimiate those that are not applicable? Yet I gather he must do this if he is to follow the L. R.

A. system. And if so, how much time will the Reporter have to attend to the other work to which I have already called your attention? One man to handle 100 opinions a year and 200 briefs and attend to all the work in all details and do the work as the L. R. A. people do it! It is easy to suggest but oftentimes it is difficult to carry out the suggestions.

I have been told that Boston lawyers complain because I do not state points made by counsel and do not give citations. In view of the fact the Reporter for the State of Massachusetts has not published a line from briefs and not given a citation made by counsel for years and years, I suggest that those Boston lawyers follow the example set by the ancient Jews when they rebuilt the wall around Jerusalem where every Jew worked on that part of the wall which was over against his own house! Charity should begin at home, and likewise let these Boston lawyers begin the work of reformation with their own Reporter, and when they have reformed him then they can come to Maine and reform Smith and have a lot of fun, and enjoy a whole lot of good, wholesome religion while they are doing it!

The idea in having points made by counsel stated by the Reporter, together with citations, is that the profession may see whether or not the Court has met and answered the points. This applies to questions of law only as I understand it. But questions of fact are of great importance in many cases. It may be that they are of almost as much importance as questions of law. Certainly questions of fact are of great importance to litigants. Yet you send cases to the Law Court on motion where the Law Court has to review the findings of facts as made by a jury, and determine whether or not

the findings of facts by the jury were correct. You send cases to the Law Court on report where the Law Court is clothed with power not only to determine the law but also the facts. Then why in such cases should not the evidence be stated in the reports of such cases in order that the profession may see whether or not the Law Court has correctly decided and determined the questions of fact? Yet there is not one of you who will not agree with me that it would be utterly impracticable to publish the evidence in such cases although the Law Court once in a great while might err in its finding of facts.

I had not been Reporter very long before I found myself up against this brief proposition. As I became familiar with the work and saw that there was really more to do than I had thought, I discovered that if I worked out briefs that the opinions would be rather slow about getting into print. I talked with members of the profession about the matter. From what I could learn I came to believe that in these busy days the great majority of the profession did not care anything about the matter of briefs, but what they wanted to know was —what are the facts and what does the Court say the law is as applied to those facts. I have a great many letters from lawyers throughout the state, and I get them every time a new batch of cases comes from the Law Court, inquiring when will such and such a case be out—when will it appear in the advanced sheets? I get no letters asking about briefs or saying anything about briefs. Now under the circumstances as I have detailed them to you, do you want me to take time to consider briefs and report them? If I become satisfied that the profession of this state as a whole want briefs reported, I shall make the attempt, but in that event you must

wait patiently and perhaps long for the cases in which you are interested.

I am aware that my predecessor did some work on briefs, and he did it well. My predecessor is not only a lawyer of great ability but also possesses much literary ability. Whether or not he found himself up against some of the same propositions that I found myself up against I do not know. But be that as it may, my predecessor in addition to his own work, for several years, as I am informed, employed a bright and able young lawyer to assist him in the work. I assume that he paid his assistant out of his own private pocket as the law itself makes no provision for an assistant. I cannot afford to employ an assistant. I not only cannot but I will not. I am not a man of much wealth although I do not expect to avail myself of my pauper settlement in the town of my residence for several months yet! But years ago, as a great many men have done before and will do hereafter, I married me a wife. I had a theory before I was married—the same theory that all young men have when they want to get married—that two could be supported about as cheaply as one. Well, after sixteen years of married life I have discovered that while it is true that the fire which warms one will warm two, the light which lights one will light two, and that one Prayer Book will do for two, yet, raiment sufficient to clothe one is not sufficient to clothe two, bread and molasses sufficient to feed one is not sufficient to feed two, and that one circus ticket will not do for two. (Laughter.)

Gentlemen, I have detained you longer than I thought I should. You have listened with great patience. I have tried to make clear to you things as I have found

them. I have tried to give you full information about the office of Reporter of Decisions. I have given you my reasons for excluding briefs and citations of authorities from the reports of cases. I have in my crude and verbose way stated to you my case. I now ask you as the Clerk of Courts asks the jury when it returns into the court room to render its verdict in a criminal case, "Gentlemen of the jury, what say you? Is the prisoner at the bar guilty or not guilty?" (Applause.)

PRESIDENT BAKER: Gentlemen, the question is upon the topic submitted by the program, "Should not the Reporter of Decisions state in concise form the points made by counsel and the authorities cited to each point, so that the profession can see whether and how far the Court has met and answered them?" Upon that there is no motion pending. Does the Association desire to take any action?

MR. SMITH: Mr. President, there is one matter that escaped my attention and that I should like to mention. Last Saturday I rode from Houlton to Bangor with Brother Appleton of Bangor, and I went over this same matter with him as I have gone over it with you here, and when I got through my Brother Appleton thoroughly agreed with me that it was impracticable to publish parts of briefs and citations, and made this suggestion which I think is a good one—you know that we have a law in this state that if you have a printed brief that the statutes of this state require you to file three copies with the Clerk, which he is to have bound up, and one copy placed in the Law Library at Bangor,

one in Augusta and one in Portland. It applies only to the printed brief. My Brother Appleton suggested that you formulate a law requiring three copies of all briefs in addition to those furnished the Court—three copies of all briefs, to be filed with the Clerks, and have them of proper and uniform size and be bound up, so that copies of every brief would be on file, one in Bangor, one in Augusta and one in Portland. I think the suggestion is a practical one, that the parties presenting a case to the Law Court, in addition to the copies of the printed case should give to the judges and also file with the Clerk three copies, to be bound up and placed on file.

HON. CHARLES F. JOHNSON of Waterville: Mr. President, so far as I have any connection with this case I am inclined to move that a "nol pros" be entered. Of course I realize as all the members of the Bar do — and we do now if we did not before — the enormous amount of work which the Reporter of Decisions has to do in connection with that office. I think we all feel that we would like to have if we could, the citations of authorities and a concise statement of the points if it were possible, but we do not expect the impossible, I know; and while I feel that it would be a great benefit to the Bar, and I know that others with whom I have talked feel the same, that under the circumstances with the great amount of work the Reporter of Decisions has to do, it seems to me that it is impossible for him to do that, unless there is some legislation provided by which assistance can be furnished.

PRESIDENT BAKER: The Chair awaits any action the Association may desire to take upon this topic. The

Chair will entertain any motion to take action in any form. If no motion is made, the subject may be considered as exhausted. There is no doubt the Reporter of Decisions has thrown a flood of light upon the practical situation, and as the Association does not seem disposed to take any definite action the topic may rest there.

PRESIDENT BAKER: Gentlemen of the Bar Association of Maine, as this is the first opportunity I have had of doing it, I desire to express to you the very deep appreciation in which I hold the distinguished honor, as I deem it, which I received two years ago at the hands of this Association, in naming me as its President, and the graceful and appreciated compliment of a re-election to-day. I can say, in all sincerity, that following the men whom I am following in this office, and preceding those whom I am preceding, I deem it to be one of the prized honors of a professional career.

This Association is composed of the brains of Maine—not of their exclusive brains by any means, but of men who are pre-eminent in the ranks of their profession and in the ranks of citizens; and it is an honor that one may well prize and cherish. Anything that I can do to serve the interests of this Association, to serve its objects, or to advance the standing of the profession in the state, I shall now and always most cheerfully do.

For many reasons, but especially for the reason that time presses and that there are more topics of interest to the profession to be discussed, I shall to-night say but a very few words to you, and then merely by the way of the briefest suggestion. I would have been glad, had circumstances permitted, to have at a more fitting time

presented to you some more extended suggestions. To-night, I shall make three practical suggestions only.

This is an era of agitation, and from agitation, though sometimes excessive, progress results. We are here to assist and at the same time to temper by such wisdom and conservatism as we, the members of the Bar of the State of Maine, can bring, the path of that progress—to see that re-action does not dip too far away from action; and I think the members of the Bar of this state are deeply conscious that they are the ones who should feel, and keenest feel, the broad fact that there are times when the finest action is to refuse to act. There are times when the highest type of moral courage is a noble abstinence from action, when the easy path is that of restlessness; and, in times like these, where the only virtues that are praised are the virtues of unrest, I believe it is one of the special functions of the Bar of this state and of all the other states to see to it that a wise self-control should govern their great influence. I am not, therefore, one of those who think that the normal state of society is that of unrest. There are undoubtedly activities which are normal, and which necessarily accompany the healthy and growing man, but there is also a morbid activity which is but the restlessness of disease, or the inflammation of passion, or the easy yielding to those lines which are of least resistance; and in these days when there are silent revolutions, not one but many, in progress under our very eyes, when the most noted characteristic, perhaps, of the age, of this country at least, is the tendency to supersede all delegated authority, to reject the trained assistance of those representative men, who, if properly chosen, may well be thought to stand for the better

things and the wider knowledge of life — it seems to me, and I would venture to lay that suggestion before the Bar of this state, that our great influence — because in the aggregate it is of tremendous weight — that our great influence should be thrown on the side of a wise reserve.

Great reserves of power that are stored in the lakes most benefit the land when they are distributed through the rivers and the streams of delegated power. The great, central reservoir, that power which ultimately reposes in the people, is to be used with a wise reserve, lest instead of irrigation we get inundation; and yet, though that be true, and though the forces of re-action sweep from one extreme always to the opposite extreme, it is equally true that we should not retard, but should continually endeavor to promote, true progress. But true progress seldom lies in either extreme — rather in that even path which takes its way undeterred by fear and regardless of consequences. I am, therefore, not one of those who place too much faith in the constant necessity of change, either in law or in procedure. But yet, that should not prevent us from keeping our minds clear and open to those reforms which do satisfy the reason — those demands and those requirements and changes which the experience of added years has shown are useful and which open up wider paths for the better doing of those things that ought to be done.

Now, as I have suggested, there are three things which, to my mind, in addition to the other topics that have been here outlined during the afternoon and evening sessions,— three things, each of which, to my mind, would serve to better the conditions of legal practise, and I will venture to submit to you these three things, because all of them have been founded upon my own

personal experience, and that experience, I have no doubt, is by no means peculiar to myself, but is shared with many of the lawyers here present.

In the first place, under our practise, after verdict, the case goes to the Law Court, either upon exception or upon motion. Whether it goes upon one or the other, the Law Court has power only to set aside the verdict rendered, and order a new trial.

I would beg the careful consideration of the members of this Association to another state of things which will be found to exist in the neighboring state of New Hampshire. Having had occasion to practise under the procedure of that state and under its statutes — and I believe in all essential particulars its constitutional provisions are the same as ours — I suggest a careful study of the New Hampshire procedure in that particular, and its adoption in the State of Maine.

The point that I desire to bring to your attention is this: There a motion for a new trial as against the evidence can only be addressed to the presiding judge. I do not for a moment recommend any change in our practise in that respect. But when the case is closed, if, for instance, counsel for the defence believe that the facts, as proved up to that time, make no case in law, then he can move the presiding judge to order a verdict for the defendant. If that motion is denied, he takes his exception, and upon that exception he goes to the Law Court with his whole evidence, and, after full argument before the Law Court, if the Law Court in its judgment says that there is no case as a matter of law, then on this exception it exercises the power, at its option, not merely to order a new trial by the jury, but, if it sees fit, to direct final judgment for the defendant.

While I have not had occasion to test the converse of that practise, I fancy that under a proper case the same rule applies to a verdict moved in behalf of the plaintiff. Of course this would not so often occur.

Now that would accomplish what? In case the Court exercises its power, and orders a final judgment, that of course prevents the case from being re-tried when the Supreme law tribunal of the state has finally pronounced upon it, and said that as a matter of law there was no case there.

I have had an impression that the exercise of this power by the Law Court of New Hampshire was based in part, or in whole, upon statute.

In order to verify this impression, I have written to one of the leading lawyers of New Hampshire and find that the New Hampshire practise rests but slightly, if at all, upon statute, but has been evolved by the court itself as the logical and necessary result of common law conclusions.

Such it seems is the understanding of the New Hampshire Bar, and this understanding would appear to receive the sanction of the court from the reasoning applied in the case of *Ordway vs. Railroad Company*, 69 N. H. 429, where the opinion was rendered by the late Chief Justice Blodgett.

The line of legal reasoning on which the New Hampshire practise rests is simple, and would seem sufficient. If, when the evidence ends, whether at the close, or at the end of the plaintiff's testimony, it is found, as matter of law, that there is no legal evidence sufficient to sustain a verdict for the plaintiff, then counsel for the defendant moves that a verdict be directed in the defendant's favor, and if this motion is denied, he takes his exception to

the ruling of law, and if the Law Court on final argument decide that this motion should have been granted, it simply sustains the exception and at the same time makes good the doing of what should have been done below by ordering final judgment for the defendant.

In *Ordway vs. Railroad*, before cited, the New Hampshire Court thus answers any objection that the practise adopted would be an encroachment on the constitutional right of jury trial. It says:

"Nor" (in giving the effect of this method of procedure) "when the facts would not authorize the jury to find a verdict for the plaintiff, or if the court would set it aside if so found as contrary to evidence, is there to be apprehended any danger of encroachment upon the plaintiff's rights, or abridgment of the prerogatives of the jury. Whether a verdict or non-suit be ordered, no right of the plaintiff is taken from him, if his rights be regarded in their just extent. He cannot rightfully claim a verdict of the jury if he fails to produce evidence which will legally sustain it, and it is only when he does so fail that he is precluded from submitting his case to their consciences; nor is there any violation of the salutary rule (which is nowhere given a more extensive application than in this jurisdiction), that to questions of law the judges are to respond, and to questions of fact, the jury, because it is purely a question of law whether, upon a given state of facts, the plaintiff is entitled to recover."

At the same time, the New Hampshire Court, in its discretion, may and does direct a new trial by the jury if it deems that justice so requires.

The only statute in New Hampshire which seems to bear upon the subject, as I am advised, is the following,

found in Public Statutes of New Hampshire, Chap. 204, sec. 15:

"Upon the determination of the questions arising upon a bill of exceptions or case reserved, such judgment shall be rendered or order made at the law term as the case requires; and if judgment has been rendered in the case it may be vacated as if rendered by mistake, and such further proceedings may be had therein as to law and justice appertain."

It will probably be found, on examination of our own statutes, that power equally effective, so far as statutes went, has been conferred upon our own Court. If not, a simple change of statute would effect it.

The reform advocated here would seem, therefore, to be in the hands of the Court itself. There would seem to be no legal or constitutional objection to the adoption of this procedure by the Law Court of this state. While its importance seems to be urged by the logic of common law and as the only means of giving full effect and authority to the deliberate determination of the Law Court.

Now, under our practise, our Law Court not exercising that power which it does exercise in New Hampshire, in one case where I myself was personally engaged,— and I use this merely as an illustration — the case came back and was tried before four different juries, and each time on motion the case was again taken to the Law Court with the same result, "Verdict set aside; new trial granted," until finally at the fourth trial before a jury the presiding Justice ordered a verdict for the defendant in accordance with the opinion of the full court in the same case delivered at the three trials previous.

MR. S. S. BROWN of Waterville: You say that was in this state?

PRSIDENT BAKER: That was in this state, and in this county.

Now, to my mind, the question of reform in judicial or legal procedure is based upon this principle: That parties should have all unnecessary expense spared them. There was an expense that was not only unnecessary, but, as all unnecessary things are, wasteful. The final result was the same as if final judgment for the defendant had been directed by the Law Court in the first instance, as would have been done, undoubtedly, under the New Hampshire practise; — but yet both parties, plaintiff as well as defendant, were put to the great and needless expense of four jury trials and three arguments in the Law Court before that final judgment was reached, or could be reached under our statute. I commend to the consideration of this Association the study and respectfully recommendation to the Bench of the New Hampshire plan.

The second thing, which I also discovered as one usually does, by personal experience,— in the United States Court, after a final decision is rendered by the Court of Appeals, whatever that may be, that decision, although fresh from the pen of the Bench, must be held in abeyance for a certain specific time — I believe under the United States practise it is thirty days — during which time it is open to counsel on either side who may feel aggrieved by the decision to reconsider and reverse its own finding.

Now of course in the ordinary case that is absolutely useless, because, after the Court has maturely con-

sidered the case and reached the result which it desired to reach, it would abide by that result. It is not for the ordinary case but for the extraordinary case that that ambulatory decision is provided, because in some cases the Court may have inadvertently fallen into error. It may be an error of law, even of fundamental law, and such an error as when brought to the attention of the Court will at once and necessarily be rectified, and the result reversed or modified. The same practise prevails in many of the states. To my knowledge, it does in New Hampshire, and I have the impression it does in Massachusetts.

Now I have this case in mind, where a decision had been rendered by the Law Court, a verdict had been obtained favorable to my client in the Court below after a very extended jury trial. The case was taken to the Law Court by the opposing party on motion, and under the motion, no exceptions having been taken to the law, — at the Law Court the point was sought to be made that the verdict should not stand because the law would not warrant it, notwithstanding the facts proved at the trial, and assuming that they would have warranted the verdict as a matter of fact. The Law Court kept that case under advisement for I think about three years, and when it decided, sustained all the various legal contentions upon which the verdict was based except one, and that was the fundamental proposition of the whole case, and was based, as I had conceived, on practically a legal axiom, on a proposition so inherently simple and nondebatable that it was necessarily law. The Law Court, however, took the opposite view and said that the law was to the contrary, and as a result ordered a new trial.

Now the question which the Law Court had thus passed upon was either obviously right as a matter of law, or obviously wrong. It was an elementary proposition, and I discovered, while it seemed to me that the law was necessarily wrong, elementarily wrong,— I discovered that there was no possible way by which I could ask the Law Court to reconsider its own decision and submit for their consideration that, in our judgment, there had been an inadvertant mistake of law made.

And what was the result? The result was that the only method found possible was to retry the whole case. In point of fact, we succeeded in making an arrangement by which the evidence, the printed record of the evidence, should be taken as having been put in over again, thus avoiding the expense of all the witnesses being summoned again, and I made the same point as I had before in regard to the law. Of course the presiding justice over-ruled the point under the decision of the full court, as he was bound to do, and I asked an exception again and carried the case to the Law Court again on the same identical point; and after the fullest argument, and the fullest citation of authorities in that case, the Law Court of the state reversed its decision. And the late Chief Justice of the state, who had drawn the original opinion, which had been published in the books meanwhile, himself, and voluntarily, as I was informed by some of the associates upon the Bench, took upon himself the onus of drawing the reversing opinion, stating with a magnanimity of mind that stamped his greatness not only as a lawyer but as a man, that he had been largely responsible for the original inadvertence of the Court, for its original error, and he would draw the opinion frankly stating that fact, and the two opinions are now in the books.

Now this same Law Court would have reached precisely the same result, without embarrassment to themselves, without annoyance to the profession, without unnecessary expense to the parties, had there been power given under our statutes so that that decision after being made could have stood for, say, thirty days, and within that period either counsel might ask the Court to reconsider any obvious error of either law or fact, then the Court might modify or reverse their opinion as they desired and no new trial would then have been granted. In that case, to further illustrate the hardship of the principle, had we really been obliged to go through an actual new trial, which formerly had occupied at least ten days, and was one of the hardest fought cases I was ever engaged in — the means of my client would have been absolutely inadequate to have even thought of doing it, for it had more than strained his modest resources to provide the witnesses for the original trial and to maintain them at expense during the ten days of the trial. Now I earnestly suggest to the members of this Association the wisdom and the imperative need of a change of legislation which I think could be simply done and in the line with the precedents of other states and of the United States Courts in that particular.

There is only one other thing to which I desire to call the attention of the members of this Association.

I received a letter from a member of the Bench of this state the other day in connection with this meeting in which the learned judge stated that though he knew I was conservative in my own views as to legal reform, he thought I must admit there were certain things which caused delay and entailed unnecessary expense.

One of those things, and the thing which to my mind

would save the greatest expense in litigation, lies, it seems to me, in the absolute power of the Court itself, by rule which it should make, and which it seems to me ought to be made — and that is the over-burdensome cost of printing a case, resulting from the manner in which it is done, from the looseness of the print, the small number of words upon a page, the spreading of those over a very large space, and the insertion verbatim of every question and answer, whether material or immaterial. A rule of Court that should require a given form, a given number of words upon a page, and should require, at least with proper reservations, all the ordinary testimony to be in narrative form, so that all the essential evidence could be served in compact form both to counsel and to the Court. Such a rule of Court, to my mind, would cut down by one-third to one-half the expense of printing; and, as is familiar to the members of the Bar, the cost of printing after an extended jury trial may often far exceed all the other expenses, including those of counsel, in the case. I respectfully suggest to the Association and to the Court the desirability of saving in that respect a wastefulness of expense.

Now, gentlemen, I do not and cannot forget in closing that this is an Association of the members of the Bar. The distinguished judges of the Court are members of this Association *ex virtute officii*, and are always its most welcome guests when we can obtain their presence; but essentially this is an organization of the Bar, and does not the roster of their names alone, those who have graced this Bar, living and dead, bring its note of encouragement to us as plain members of the Bar of Maine?

I yield to no man in my estimate of the high duties and honors of the Bench, but I love to think them fully matched by the opportunity and career of a great lawyer at the Bar.

The voices which echo down the dim corridors of history, the trumpet tones that have daunted oppression and stirred the nations to liberty have come in surprising numbers from the master minds of the Anglo-Saxon Bar. Erskine, Gratton, Fox, Emmett and Burke in England; Patrick Henry, the Adamses, Hamilton and Sumner in America, to speak not of more recent names, are the men whose great hammer strokes have slowly beat out for us the divine, imperishable shape of human liberty.

Over against the career of a judge upon the Bench, I would set for a moment the career within grasp of a great leader at the Bar — self-respecting and never servile, wise and conservative in counsel yet courageous in his convictions both as to law and fact, proud of winning his case yet not dismayed by temporary defeat, setting store by the books yet setting greater store by the power of original thinking and the luminous unfolding of legal principles which alone give value to the books, sullied by no taint of dishonor yet daring all things else in discharging his duty to his client — all of us are justly proud to follow, *Etiam longo intervallo*, such an exalted ideal.

I love to feel that the ambitions aimed at by a great judge upon the Bench and a great leader at the Bar are different indeed, but not in loftiness; that where they deviate, it is not like two ways of which one seeks the valley and one the height, but, rather, like ways which climb distinct yet kindred peaks, both towering into a rarer air. And so along the way, when we pause an in-

stant, as to-night, for a breath and a cheer, or when we again press upward, now perhaps in some darkness, now catching the gleam of stars, we are proud to feel that the word which passes through the night from Bench to Bar, from Bar to Bench, from mountain top to mountain top, is not a cry for help, but the friendly hail of equals, each seeking a higher plane. I thank you, gentlemen, again. (Applause.)

PRESIDENT BAKER: The next topic before the Association is No. 11 upon our program, "The desirability of establishing a system of Superior Courts." This is an important topic and the discussion of this matter will be opened by Brother Oakes of Auburn.

MR. H. W. OAKES of Auburn: Mr. President and members of the Bar Association, I think in view of the lateness of the hour, I shall confine myself closely to the notes which I have prepared on this matter, and present the matter to you as briefly as possible.

In opening this discussion I shall speak of circumstances and conditions which are familiar to all the members of the Association.

I shall not expect to introduce new ideas or add any original matter to the views which have, no doubt, already been considered by all here.

The subject, however, is one deserving discussion. It has been brought into prominence lately by reason of the introduction of a petition and act for the establishment of a Superior Court for Androscoggin, both following suggestions in that direction by Chief Justices Wiswell and Emery.

I understand the petition and bill referred to the Judiciary are awaiting the meeting of the State Bar pending further consideration.

So far as I can learn, the general opinion of the members of the Androscoggin Bar whose names appear on the petition for a Superior Court would be that a system of courts constituting a circuit would be preferable to the mere addition of another separate court to the two now in existence.

Changes in court procedure and practise come slowly in Maine.

We have conformed to modern ideas in partly opening the doors to the admission of parties as witnesses, though we are still behind Massachussetts in that respect. We have avoided codes, although acts providing for uniformity of legislation are being urged with great force, and would constitute a step in that direction.

We still retain common law pleadings, modified by provisions for brief statements and amendments, and with the exception of the enlarged equity jurisdiction and broader application of equity process and principles, our courts remain substantially as they have been for generations.

The statutory changes in reference to court procedure have been surprisingly small, and it is, perhaps, true that the changes brought about by the courts themselves in interpretation of rules, conforming to modern ideas and adapting the court gradually to the needs of modern business, have been fully as great as those brought about by direct legislation.

But laws are not supposed to be made by the courts, only declared; and with the best purposes and intentions, there are limits beyond which they cannot go.

Our Supreme Court still constitutes the trial court for all classes of actions, and the same justices sit at the trial of causes, and later, as law judges.

There are strong considerations to be urged in favor of this system, but apparentily the drift of opinion has been steadily against it elsewhere, and, undoubtedly, there is a feeling with many members of the bar that a separation of the trial judges and law judges, at least to a greater extent, will at some time be provided.

It is to be observed that as years have gone by, the business of the courts of the state has changed in its character, more especially in the business centers.

Like all other institutions, and perhaps more than any other, the courts are affected by the changing commercial conditions of the age.

There are at present increasing numbers of commercial claims, of considerable size, not involving new or unusual principles, but often sharply contested as to amounts and details.

They are too large to be handled by the Municipal Courts. Business men dislike to await the results of litigation in the Supreme Courts; these actions can only be entered at one of two or three terms a year in any given county, and after entry, it is often difficult, if the defendant desires delay, to reach a prompt judgment.

There is a similar change and corresponding situation with respect to criminal matters, especially in the vicinity of the cities.

It is also noticeable that within the last twenty-five years there has been a large increase in the proportion of damage cases for negligence.

Legally or otherwise, many of these cases are undertaken on the basis of contingent fees, and in view of this

and of the extension of liability constantly being imposed by acts relating to employers and employees, it may be expected that these cases will continue to grow in number and size.

Along the same lines and arising from similar causes, we find a great addition to the amount of work on the equity side of the court.

With its enlarged jurisdiction and the broadened scope of equity practise, the field in this direction is much extended.

It is within the recollection of many members of the bar to-day that as young practitioners they rarely came in contact with an equity case, and its principles, practise and procedure were generally little understood.

To-day, by reason of its flexibility, its power to reach out directly and deal with many conflicting interests with promptness and certainty, the equity arm of the court is often invoked.

A glance at the nature of the bills introduced in our legislatures at recent sessions will illustrate better than almost anything else the number and diversity of the different business interests which are coming into existence in the state.

All these things indicate a continued increase in the quantity, size and variety of the cases which will come before the courts in the immediate future.

The result of all this is that the work of the Supreme Court has been much increased and will inevitably increase to a greater extent in the future.

The eight justices during the year hold forty-six *nisi prius* terms and three law terms. In the intervals they are constantly called upon to act on various equity matters and others of such a nature as to be dealt with in

vacation time, and in the meantime must find opportunity to write their opinions as best they may.

So far as I am informed, the members of the Supreme Court are not claiming that they are overworked or unwilling to continue as at present; and it is a matter of pride with the members of the State Bar that its Supreme Court does its work promptly and efficiently. At the same time it is unquestionable that, with the constant succession of trial terms, some of them long, the members of the Supreme Court, as compared with the Supreme Court of any other state, are very hard-working men, and necessarily so.

At the present time, Kennebec, Lincoln and Piscataquis have two terms a year, Aroostook four (counting its adjourned term at Caribou as a separate term), and Penobscot five terms, two of which are for criminal business only. All the other counties have three terms a year.

That these terms are generally sufficient in counties where a large commercial business is not transacted may be true. But for the commercial counties, (and those which may be reckoned as such are growing in number) the situation is different.

The lack of an adequate number of terms is a serious difficulty. And it is a difficulty along in this direction, rather than with respect to a crowded docket at any particular term that is important, although it is often suggested, when a term is short, with few cases for trial, that such a term illustrates the sufficiency of the present system and indicates that there is no need of further Superior Courts.

It seems to me, then, that it is a fact upon which the proposition for a system of Superior Courts is based,

that for commercial localities an increased number of trial terms is demanded.

It would seem to be a fact, too, that with the Justices of the Supreme Court at present holding forty-six trial terms a year, with three law terms, and the recognized necessity of more frequent consultations by the full court, the Supreme Court cannot well be expected to hold these additional terms; and, if practicable, the demands upon their time and strength for the trial of causes should be lessened rather than increased.

Two questions, then, present themselves.

1. Would a system of Superior Courts meet the situation?

2. What system would be desirable?

1. The experience of this state and of the other New England States would indicate that this is the natural and obvious course to follow.

Our present Superior Courts, while distinct and covering each only a single county, are subject to general provisions applicable to both, and have long since demonstrated their value. Were they to be eliminated, their place would have to be supplied at once by some provisions to relieve the additional burdens which would be thrown upon the Supreme Court.

Of the other New England States, New Hampshire, Massachusetts, Rhode Island and Connecticut have established Superior Courts which have proved satisfactory, and Vermont has just provided for such a system.

That this is practicable there perhaps needs no further discussion. That with judges able to devote all their time to the trial of causes, having none of the duties of

law judges, adequate terms and circuits could be arranged without conflict as to times seems hardly questionable, and every county needing more frequent terms could readily be reached.

The system once established would be flexible and easily adaptible to the future growth and development of business.

A more prompt entry and disposition of suits, especially of the large commercial cases, would be provided; and the Supreme Court, if the Superior Courts should have an adequate jurisdiction, would be correspondingly relieved of the class of work for which it is least required.

2. The system to be adopted, if any, is, of course, a matter requiring serious consideration.

The objection to an addition to the present system of Superior Courts seems to arise largely from the fact that each court is now held all the time by the same judge, and that the courts are not in all respects similar as to their jurisdiction and practise.

After some examination of the provisions for such courts in Massachusetts and the other New England States, it seems to me that the practical thing in the State of Maine is to add one or more judges to those already created; to designate the territory over which the circuit court should exercise jurisdiction, which need not at the outset cover the whole state; to make the jurisdiction practically uniform by adaptation of the law applying to the courts at present established; to provide for a Chief Justice or Judge of the Superior Court and for consultations; to provide for an enlarged jurisdiction, original and concurrent, as to civil actions; to give the court cognizance of criminal matters, of divorces, and of

appeals from the inferior courts; and to provide for terms as needed in the several counties.

The system of practise, including that of exceptions and motions for new trial to the Law Court, is well defined and understood under the law providing for our present Superior Courts, and very little change would be required to adjust the machinery to a general system.

It is difficult to transplant a system entire from another state, like Massachusetts, to our own. There are many conditions existing there in practise which would necessarily differ from those in our state.

One consideration is that of distance. The State of Maine is practically equal to all the rest of New England in size. General provisions as to circuits and service of judges would require to be modified and adapted. It would appear that these conditions could be more readily taken care of by the extension of our own system than by the adoption of an entirely new system.

One suggestion remains. This is a matter in which the Bar of the State is generally interested. If it seems desirable that there should be legislation for the establishment of such a system, a committee of this Association should co-operate and advise with the committee of the Legislature having the matter in charge, in considering the proper provisions.

I wish to say that in our county one of these effects is the trial of a large number of small cases in our Supreme Court. To test the matter I counted yesterday the cases which had been tried in our court at the present term, which is just closing up and which commenced on the 15th of January. There had been at that time 15 cases in which verdicts had been rendered for the plaintiff, and the average amount of the verdicts in those cases was

about $130. I found verdicts ranging from one dollar in an assault and battery case, which came up on appeal, to something over eight hundred dollars, which was in a case on a building contract. That was the only verdict of any size, and the most of them ranged away down below that. There are a great many appeal cases tried. We have two municipal courts, one in Lewiston and one in Auburn, and each of them have jurisdiction of three hundred dollars. A very large number of the commercial cases which come within those limits are entered in these courts, and of the cases that are so entered of course a very large number of them never come to trial—they are settled up or they go by default. A great many of the cases that are tried come up on appeal to the Supreme Court, and a good deal of time is taken in the trial of small appeal matters.

Now with more frequent terms of court able to handle those matters, it seems to be beyond any question that in a county like Androscoggin, with two cities in it and some large communities, business in the courts would be greatly facilitated. I presume that the conditions would be somewhat similar in any county in which there are one or more cities. And I also assume as I have stated that the condition is one which in view of the business of the state and the great variety of industries which are coming to the front and which are developing, that the conditions are such as to be sure to become more pressing as time goes on. I consequently think that some arrangement for a Superior Court is desirable for the commercial localities, and that a circuit of Superior Courts developed from the present system would come very near to meeting the conditions.

MR. BERTRAM L. SMITH of Patten: Do you have in mind, Brother Oakes, the number of counties that you would add to the present counties, that is, outside of Cumberland, Kennebec and Androscoggin?

MR. OAKES: No, I think that is a matter which needs careful consideration and consultation with the lawyers of the different counties.

PRESIDENT BAKER: Gentlemen, the topic is still open if any other gentleman desires to be heard.

MR. HENRY HUDSON of Guilford: Mr. President, I wish to speak of conditions which exist in our county, and while our county is so small that it would hardly be expected to be included in a circuit of Superior Courts, yet we have a condition of things in our county that we feel ought to be met in some way. At the September term of the Supreme Court last fall, a committee was chosen from the fact that at a meeting of the Bar Association, the Bar voted that there must be an additional term of court in our county, and a committee of five members was chosen to have charge of that matter. I fully appreciate the condition of things in our county, and that is that we have got to have relief in some way. It is due to the people there.

Now, I will say that immediately after it was known that we were to take measures to have another term of court during this session of court the present Chief Justice sent to the chairman of that committee a letter urging upon us not to do that because they had all that they could do at the present time, all the work they could do with the present terms of court. The members

of that committee have as yet forborne from presenting that matter to the present Legislature. We do need more terms of court — we do need that a judge can come there to our county and hold court and not be compelled to leave when we have a dozen or fifteen cases on the assigned list that are not reached, and a dozen equity cases that have been hanging, I was going to say, year after year to be tried, and really that is the literal truth. I am finding no fault with the court; they work all they can. Judge Powers was there this fall, and he stayed until Saturday, when he had to be in Portland on the following Tuesday, and of course the court had to be adjourned; but he did come back and try a few equity cases and stayed as long as he could, and the rest of our equity cases have gone over to be taken up at any time that we can get some judge to come there and hear them.

Now, gentlemen, I am speaking of this for the reason that something should be done in this state, as it seems to me, either by creating a system of Superior Courts, such as you speak of, or in some other way to relieve our judges who hold our *nisi prius* terms, so that they will have time enough, especially in our smaller counties, to stay and do the work, and then that we might be able to get a judge to come there to hold equity court the same as in other counties; but we are up against the proposition because they have so much to do that they don't get time to come. As Judge Powers said, he would be glad and willing to come if he could only see his way clear to come, and so the other judges have said to us. Now, I trust that the Bar Association of the state will choose a committee to meet this condition of things. Of course it has been talked about having a separate appellate court. I try a good many cases before

the judges who hold our terms of court, and I do not find any fault with that system, but I do want the Bar Association to offer some relief either by way of a Superior Court system to relieve the present judges so that they will not have so much work to do, or else in some other form. I did not like to take any of your time this evening, as the hour is growing late, but I wanted to present here the situation as it is with us, so I think that some action should be taken here by this Association in this matter.

HON. HERBERT M. HEATH of Augusta: Mr. President, I had a letter from the Chief Justice on Monday of such a character that although the hour is very late, I think as a matter of courtesy to him perhaps I ought to say something. I will say, first, in that letter he expresses his very great regret and inability to be here with us at this meeting of the State Bar Association. He had planned to come and evidently from the tone of his letter wished to come on account of this very topic, perhaps. I trust that the members of the Association will not think that I am telling what he wrote, because he wrote in a confidential way, and yet because of the general tone of the letter I think I should not be doing my duty to him if I did not say something of his views. And then you will understand that what I do say is rather on account of his having written, but that I am not speaking for him exactly.

I think, Mr. President, we make a great mistake if we continue in this state the policy of any more patch-work upon the present Superior Court system; that if we are to do anything it ought to be on broad lines, having in view the idea of limiting or lessening the amount of

work now done by the Supreme Court judges. I cannot quite agree with Brother Oakes that the Supreme Court is prompt in its work. We all know the great length of time that law cases are held; and the President here to-night has instanced cases of his own, I think, in two particulars, where we were there for three years.

Now, it is not right for the business interests of this state that any case that goes to the Law Court should be held there three years, or two years, or one year. How are the members of the court situated? They hold on an average of six *nisi prius* terms each year; they have three law terms, and it is a matter of common knowledge that their law work has to be done substantially, if not wholly, when they are at home. And in passing cases around as they do, from one to another, so long as we continue that large amount of *nisi prius* work and the tremendously increasing amount of equity work that they have, just so long must we expect these intolerable delays in their judgment. It has always seemed to me that when we do anything we ought to do it on broad lines, and that the system of Superior Courts ought to be a uniform one throughout the state, throughout all the state, as it is in Massachusetts; that it should be a court of dignity with a Chief Justice as they have, and that that court should have concurrent equity jurisdiction as the Superior Court of Massachusetts has; and we could then take from the Supreme Court all their criminal jurisdiction, all the divorce jurisdiction and give to a dignified Supreme Court substantially all the law jurisdiction. And in that way, having a court of that character, then I hope the time will never come when we shall have purely an appellate court of law. I trust that the members of the Supreme Court will always be sent

back to the people and to mix with the Bar and to mix with men in practical life and do some *nisi prius* work; but if they could be so arranged along broad lines, following the Superior Court system of Massachusetts, and we could then have four law terms instead of three, they would then have time to do their work efficiently, more carefully and certainly more promptly.

Mr. President, those are simply the general suggestions I want to make, and I think we ought to appoint a committee, of which I do not want to be a member, and therefore I will not make the motion—but I believe we ought to appoint a committee to confer with the judiciary committee of this Legislature and see, even at this late day, if something could not be worked out on broad lines that would give us a good Superior Court working all over the state with good, broad powers and limiting the work of the Supreme Court.

PRESIDENT BAKER: And is there any action to be taken by the Association upon this article in the program?

MR. HEATH: Mr. President, I move that a committee of three be appointed to confer with the judiciary committee, with the understanding that the President will not appoint me upon that committee. I just make the motion to facilitate the matter.

The motion was agreed to.

The Chair thereupon appointed as such committee:

H. W. Oakes,	Auburn.
Harry R. Virgin,	Portland.
E. C. Ryder,	Bangor.

HON. L. B. DEASY of Bar Harbor: Mr. President, I desire to present the following motion out of order: I move that the Committee on Law Reform of the Maine State Bar Association be instructed to take into consideration the recommendation in the President's address as to changes and reforms in legal procedure; such committee to report to this Association at its next business meeting, embodying in their report a draft of an act or acts, and a rule or rules of court conforming to such recommendations.

The motion was agreed to.

PRESIDENT BAKER: Gentlemen of the Association, I will take this interval to say that the names of four gentlemen have been through the proper channels, recommended by the proper committee according to the by-laws of the Association for membership in this Association. They are:

Louis C. Stearns, Jr.,	Bangor.
Hugo Clark,	Bangor.
Seth W. Norwood,	Southwest Harbor.
Alfred R. Peaks,	Foxcroft.

On motion it was duly

VOTED, that they be admitted as members of the Association on the usual terms.

PRESIDENT BAKER: There are two more topics upon the program, the next one being sub-divided into two branches.

First. Should the state have the right of exception and appeal in criminal cases.

Second. Should the convicted defendant in a criminal case have the right of appeal to the Law Court as in civil cases. And the Association will be glad to hear from Brother Brown upon those topics.

HON. S. S. BROWN of Waterville: Mr. President, it is so late that obviously my remarks upon these subjects must be very brief, and the condition of my voice is such that I could not do otherwise. I have not much to say about the state having the right of appeal. I think I will say in substance that I do not think the state should have the right of appeal, but I have never been able to understand why it is under the statutes of this state that a man whose liberty is put in jeopardy should not have the same broad method of defense that he does have where a few dollars are involved. We all understand that until recently there was no statute, no authority whatever under which any criminal could get into the Law Court on a motion to have the verdict against him set aside and a new trial granted. Why it was so enacted I have been unable to comprehend; but a few years ago it was provided by statute where the danger was that a man might be sentenced to the state prison for life he could go up to the Law Court, and if three of the judges said that they thought it would be proper to have a new trial he should have it.

Now, gentlemen, a little matter occurred in the office of a Brother Attorney in Waterville the other day, that illustrates all that I care to say on that subject. There were two men sitting at a table and they were counting their money, a little matter, settling a case, and in that count they did not agree as to how many dollars had been paid over. One of them insisted that the other

fellow had pocketed one of the ten-dollar bills, and the other denied it. I said to myself, there is a good case to illustrate the absurdity of our law at the present time; if the man who claimed that the other fellow had the ten-dollar bill should sue for money had and received he could go up to the Law Court; if he said he stole it, then he could not. If he was indicted for stealing a ten-dollar bill where the penalty would be imprisonment, he could not go to the Law Court on a motion for a new trial, but if he was sued for the value of ten dollars and only that, then he could go up to the Law Court with as big a brief as his lawyer saw fit to make. So that under this condition of things it looks to me as if the Legislatures of the State of Maine had provided that a ten-dollar bill was of more value than a man's liberty. I don't know as lawyers generally are aware that that is the law. I did not know it when I first began to practise law, although I had read the statutes thoroughly —why, in a civil case you could go up to the Law Court on any matter however small, but in a criminal case where the man's liberty and under the old statute where his life was in danger, he could not get any farther than the judge who had tried the case and who had entertained all the prejudices that sometimes arise from various causes—for judges are never above the danger of prejudice any more than the ordinary man.

Now, what I believe to be true, as a matter of fair dealing and right is this—and I will say this because I believe what I am about to state, and I myself have drawn an amendment under the criminal law which I suppose now is before the judiciary committee. I have proposed that that statute by which a man under a verdict of "guilty" is liable to go to state prison for life

—there is a statute which provides that in such a case as that, where the penalty is imprisonment for life, he may ask the judge who presided at the trial of the case to grant him a new trial, and if refused then he may appeal to the Law Court; and if the Law Court thinks he ought to have a new trial, three of them are sufficient to grant a new trial. I have drawn an amendment to that statute, and I have added simply these words, I have said that in all other cases where a defendant has been found guilty by a jury and he applies to the presiding judge for a new trial, he shall have the right of appeal to the Law Court, but in that case it shall require a majority of the judges to grant him a new trial, which is a little more than is imposed upon the others but precisely the same as in a civil action. You may take any case you please and follow it through. I say to you, and I think you will agree with me, that life is the most sacred, liberty is next and the pursuit of happiness or a few dollars is last. To-day a man whose few dollars are in jeopardy can go up to the Law Court. He has the same right, no matter how small and insignificant the sum in controversy may be, he can go to the Law Court and have his case heard just like all other cases.

A couple of horse jockies may dispute about some horse trade, and it might take two or three days to try the case before a jury, and they may go to the Law Court, the one that suffers at the hands of the jury, and bother the whole Law Court perhaps two days, but the fellow that is accused of stealing or of forgery or anything of that kind cannot get away from the single judge who tried his case. Now, I hope if there are any members of the judiciary committee present — for perhaps this is the only voice that will come to their ears

—I hope if there are any members of that committee present that they will stop to consider the propriety of giving a man who is accused of crime and is liable to be disgraced by imprisonment the same right that a couple of horse jockies would have where there are five or six dollars involved. That is the law of this state to-day. Nobody can go to the Law Court in a criminal case unless by the granting of a verdict of imprisonment for life. Now, he may be deprived of his liberty for years, and still he has got to take the verdict of the jury unless the presiding judge sees fit to grant him a new trial. I say, it is not right. I say that in all cases where the proposition is under the verdict to deprive a man of his liberty that he should have the same chance to defend himself and fight it out to the bitter end that a man has who has a few dollars that he is liable to lose. I don't know but I have said all that I care to say. There were some other features that I had thought of mentioning, but it is late, and I think I have made myself understood, and I hope that the effect of what I have said here may be that the judiciary committee will consider this matter and recommend the passage of the amendment that I suppose is in their hands.

PRESIDENT BAKER: Are there any others who desire to be heard upon this topic? There is no motion pending, and if none is made, having listened to the remarks of Brother Brown, we will pass to the final topic for discussion.

MR. BROWN: Mr. President, I think I would like to have some action taken by the Bar Association upon this matter.

PRESIDENT BAKER: The Chair has heard no motion.

MR. BROWN: Mr. President, I move that the sense of the Bar be taken upon this proposition of having an appeal in criminal cases.

PRESIDENT BAKER: The motion of Brother Brown is to the effect that the sense of the Bar be taken upon the second branch of this topic, viz., "Should the convicted defendant in a criminal case have the right of appeal to the Law Court as in civil cases?" The effect of the motion, as the Chair understands it, is that the gentleman moves that it is the sense of the Bar that he should have such appeal.

MR. H. W. OAKES: Mr. President, I would like to inquire whether, following the form of the question that would involve any declaration as to the use of the word "appeal."

PRESIDENT BAKER: Yes, the language here is broad and perhaps not technical.

MR. OAKES: I would only suggest that perhaps we should understand in passing the resolution that we do not specify as to the form of the appeal.

PRESIDENT BAKER: Of course the motion is subject to any amendment or modification.

MR. BROWN: That same phraseology applies to the statute already enacted a few years ago in regard to a crime punishable by imprisonment.

PRESIDENT BAKER: The Chair hears no amendment. The question before the Association is, "Is it the sense of the Association that the convicted defendant in a criminal case have the right of appeal to the Law Court as in civil cases?"

The motion was favorably agreed to.

PRESIDENT BAKER: The final proposition on our program is "How can our legal procedure be improved in order to facilitate the administration of justice." The Association will be very glad to hear from Mr. Heath.

HON. HERBERT M. HEATH: Mr. President, I simply want to make in regard to that a motion. I have three reasons for not wanting to take up the time of the Association on this matter. First, because the city of Portland has given me a good deal of trouble to-day. Second, because the hour is late; and the third reason is that I apprehend that Brother Cornish and you, Mr. President, would have anticipated that if the hour had permitted it I should simply have said "Ditto" to the address that I made before this honorable Association some eight years ago. Unfortunately, I belong to the minority of the Bar, and it is a minority that does not seem to have grown very much in the last eight years in its very radical views upon that proposition. As some of you may know, perhaps, I believe in the idea that there should be no terms of Court, that the civil side of the court should always be open at law as it is in equity. I believe that there should be but one form of action, and generally along this line as I endeavored in my address eight years ago to outline.

Now I would like the privilege, without any recommendation whatever from the Bar, without your committing yourself in any way, if I could get others to help me, to have that matter formulated and presented at the next annual meeting of this Association for discussion. And so I will make that motion, that the Association, without in any way committing itself to any radical reform of procedure, or any particular changes of procedure, appoint a committee of three members to draft and report a bill for discussion at the next meeting. I think you ought to give us in the minority a chance to formulate something and bring it up for discussion.

The motion was agreed to.

PRESIDENT BAKER: The chair will appoint upon that commitee Brother Heath of Augusta, Brother Montgomery of Camden and Brother Parsons of Foxcroft.

SECRETARY CORNISH: I move that that committee be requested to file with the Secretary a copy of their proposed bill at least thirty days before the next meeting of the Association, so that it could be distributed among the members of the Association.

PRESIDENT BARER: I have no doubt that is a wise suggestion, and that Brother Heath will be glad to do that.

The motion was agreed to.

PRESIDENT BAKER: That completes the program, and I think the Chair may feel that it is the sense of the members of the Bar of this State that this discussion has been very interesting, points of discussion have developed among the members of the Bar and a great deal of practical interchange of views has resulted.

I think also that the Chair may congratulate the Bar Association upon the success of this new venture. Is there anything further to come before this meeting of a business order or otherwise? If not, the date of the next meeting is fixed, I suppose by the by-laws.

SECRETARY CORNISH: That is left with the Executive Committee as to the place. The date of the annual meeting is fixed by the by-laws, but the place of meeting is left with the Executive Committee.

On motion of Mr. S. S. Brown, of Waterville,

Adjourned.

AUGUSTA, MAINE, April 9, 1907.

NORMAN L. BASSETT,
Augusta, Maine.

BROTHER BASSETT:

I am advised by the Executive Committee of the Maine State Bar Association, who have the matter in charge, that you have been unanimously selected as Secretary and Treasurer of the Association in place of Judge Cornish, resigned. Sincerely yours,

ORVILLE D. BAKER, President.

Biographical Sketches of Deceased Members of the Maine Bar.

CHIEF JUSTICE ANDREW P. WISWELL.

Hon. Andrew P. Wiswell, late Chief Justice of the Supreme Judicial Court of Maine, died suddenly at the Hotel Touraine, in Boston, Tuesday, December 4th, 1906. During the year there had been an unusual amount of work for him to do and he had applied himself zealously to it. He had at last cleared his docket, and, after delivering the address at the laying of the corner stone of the Cumberland County Courthouse, had gone with Mrs. Wiswell to Boston to enjoy a well earned rest and to spend Thanksgiving, as had been their custom for several years, with Dr. Robert H. Greene of New York, a brother of Mrs. Wiswell, and his wife. Although he had complained of weariness there was no warning of the attack which prostrated him and which caused his death within a few hours.

He was the only son of Arno and Sally (Peters) Wiswell and was born in Ellsworth, July 11th, 1852. His father was a leader in the Hancock County Bar, well known for his powers as an advocate, and was loved for

his prevailing and genial courtesy in his intercourse with men. His mother was the sister of the late Chief Justice Peters.

Judge Wiswell fitted for college at the East Maine Conference Seminary at Bucksport, and graduated from Bowdoin College in the class of 1873. During his college life he devoted himself especially to history, general research and debating, and in the latter branch took a high position, being at one time president of the Debating Society.

Upon his graduation he began the study of law in the office of his father, and on account of his earnest application together with his large ability, he was able to gain admittance to the bar in the following year, and in January, 1875, formed a partnership with his father. He at once took an active part in the trial of cases and began to build up a large practise. Upon the death of his father in 1887, he took as a partner Arno W. King, and in 1888, John A. Peters, Jr.

He was National Bank Examiner from 1882 to 1886, and judge of the Ellsworth Municipal Court from 1883 until his resignation in 1888. He was a delegate to the Republican National Convention in 1884, and presided at the Republican State Convention in 1888, making an opening address of marked force and ability. He was a member of the House of Representatives in 1887, serving on the Judiciary Committee, again in 1889 being chairman of the Judiciary Committee on the part of the House, and again in 1891 serving as Speaker. He gained much credit and respect as a legislator and was an able and excellent presiding officer.

He was appointed justice of the Supreme Judicial Court, April 10th, 1893, succeeding Judge Virgin, who

died in January of that year. His appointment was well received and Governor Cleaves was heartily commended for making it. In January, 1900, he was appointed Chief Justice upon the resignation of his uncle, Chief Justice Peters.

He was president of the First National Bank of Ellsworth, trustee of the Bar Harbor Trust Company of Bar Harbor, and a trustee in the Merrill Trust Company of Bangor.

His widow, the daughter of the late Benjamin Greene of Brunswick, survives him.

Judge Wiswell was by nature endowed with and by training had developed those characteristics which insure for their possessor success in his profession, the respect of the community of which he is a part, the admiration and love of friends. He was one of the most genial comrades imaginable. Never undignified, he was always affable and cordial, and his unfailing courtesy and kindness won and kept friends wherever he went. He had a most subtle sense of humor and was very fond of joke and jest, but at the same time thoughtful of others. His friends and neighbors of a life time, who had known him and had watched his remarkable progress, were very fond of him and knew him as the true hearted, sterling gentleman that he was.

In his practise Judge Wiswell had early displayed that grasp of facts and that ability to marshal them with clearness and lucidity for which he was subsequently noted. He had great power before the jury and was recognized as one of the able advocates at the bar. He therefore made an admirable judge. He was careful, conservative, energetic, impartial and fair. His relations with his fellow justices and with the members of the bar

were always most amicable and pleasant, and he won the love of the younger attorneys, especially for his interest in them and his readiness to smooth any difficulties in their path. He had an inherited love for fair play.

Judge Wiswell found most congenial his *nisi prius* work and because of his systematic methods and energy accomplished much in this work. He presided with tact and courtesy, but his strong and forceful individuality was never lost sight of. He was eminently successful in keeping clear the issue involved and excelled in charging the jury, using a concise, clear and simple diction so that the jurors could readily grasp all the legal points of a case. His love of justice and fair play was always apparent. His opinions were marked by the same soundness of judgment and clearness of expression.

As a man, Judge Wiswell was clean and upright, an affectionate husband, helpful friend, a useful citizen. Taking into consideration his mental strength, his unfailing fairness and impartiality, his conservatism and sound judgment, his extended legal training, his dignity, courtesy and high standing of morality and personal favor, he was thoroughly fitted and qualified to adorn the high position which he attained, and his loss to the profession and to the state is great indeed.

ANDROSCOGGIN COUNTY.

WILLIAM WHEELER BOLSTER.

William Wheeler Bolster died at his home in Auburn, May 7th, 1907.

"He was an old-fashioned lawyer, a painstaking, honest and conscientious practitioner, who was born in

Rumford, in the county of Oxford, July 6, 1823, and descended from a family prominent in that section — one that enjoyed a reputation for honesty, fair dealing and decent conduct. He was, for those early times, well prepared for the profession of the law, and pursued his studies with that old-time gentleman and Harvard College graduate, Isaac Randall, at Dixfield, and after spending the usual time in study in Mr. Randall's office, where he was a fellow student with the late Judge Charles Wesley Walton, was himself afterwards graduated at the Harvard Law School in 1847. The good understanding and friendship established between Judge Walton and Mr. Bolster, while they were very young men and fellow students, lasted through their entire career, and only ended with the death of Judge Walton. After practising law twenty-five years in Oxford county, where he was repeatedly honored by his fellow citizens — for in 1868 he was elected a senator, re-elected in 1869, and in 1870 was president of that body — in 1872 he came to Auburn, identified himself at once with our Bar Association, and until his death maintained close, personal, business and friendly relations with us all. Mr. Bolster had a clerkship for nearly ten years in the Secretary of State's office in Augusta, beginning in 1848.

He served at two sessions of the legislature as miscellaneous clerk, and in 1857 when the statutes were revised, he was made clerk to the Commission, and the engrossment of the statutes, at that time, was carried on under his immediate, personal supervision. He was appointed State Bank Examiner, an office which he held for six years, and the foundations laid by him, resulting from his accurate and methodical mind, really inaugurated that wholesome policy which has been followed out by

all his successors. He was a member of Governor Robie's Council in 1883; and was afterwards a trustee of the state reform school; he served in the city government of Auburn as city solicitor, alderman, and in 1893 was mayor. His life was full of activities and his labors were always prompted and guided by good intentions. Brother Bolster was a loyal citizen, an honest, courageous, industrious and prudent man. The duties required by every place that he was called upon to fill were met by him with an earnest purpose to do right. He was a good neighbor, a kind hearted, well disposed Christian gentleman, and while it is not my desire or purpose to speak in fulsome praise of the man who no longer walks with us, yet in justice to his memory it must be said of him that he was a faithful lawyer, a safe counsellor, a public spirited citizen and an honest man."

[*Extract from remarks of Hon. George C. Wing, President Androscoggin County Bar Association, June 3, 1907.*]

"The court has listened with great interest to the resolutions offered by the Bar in memory of the life and character of our late Brother Bolster, and to the fitting words of eulogy which have been spoken in support of the resolutions. It might be sufficient for me to say that I join heartily with the Bar in the expression of these affectionate, fraternal tributes, and that I, too, am deeply sensible of his worth as a man, and of the excellent quality of his work as a lawyer. But I think the occasion calls for somewhat more.

Mr. Bolster was almost the last of that group of lawyers, then well advanced in middle life, who were active practitioners in this court when I came to the bar

in this county, thirty-two years ago. Comparatively few of those who were about my own age have continued in practise here, but the ranks of the elders have thinned as one by one they have laid down their work and passed into eternal rest, until only four remain. Then Ludden, and Wright, and Dunn, and Moore, and Stetson, and Record, and Knapp, and Dresser, and Washburn and Bolster, and Hutchinson, somewhat younger, were all actively engaged in legal work. Now all are gone. At that time, Mr. Bolster was a member of the firm of Pulsifer, Bolster & Hosley, whose offices in Lewiston were next door to my own, and thus at the very outset of my life here I became acquainted with him, and the friendship then formed was never interrupted.

At the time I first met him he had already been practising law almost as long as the time which has elapsed since, having been admitted to the bar in 1846, when Ezekiel Whitman was Chief Justice, and Ethel Shepley and John S. Tenney were associate justices. These names carry our memories back over two generations of lawyers, and vividly remind us of the wide reach of time through which Mr. Bolster's professional experience extended. In this connection, it may be noted that he was the early friend and life-long intimate of the late Judge Walton.

To those of us whose experience in the work of the lawyers goes back only a single generation, the change in the methods of work in court and out seems little short of revolutionary. What then must have been the reminiscences of Mr. Bolster as he thought back to the time of his earliest practise, in the days when there were no stenographers in court, no stenography or typewriting in offices, no telephone annihilating time and space and

multiplying human efficiency, and no quick transportation. In those days the country lawyer, as his predecessors had always done, sat in his office, and with drudging patience wrote and copied, wrote and copied, the livelong day, with his own slow hand. The court room then as now was the theater in which the lawyer waged his fierce conflicts and glowed with the warmth of combat, and more than now established his proper rank in the profession by the number of trophies of victory which he wore. Those were the days before special pleading had been wiped out by statute, and when the lawyer in court, to plead safely, must know the law exactly.

In those days, perhaps even more than now, lawyers from the cities took a considerable share of the court business in rural counties. When Mr. Bolster commenced practise, he found in the courts where his work was, such men as Hammons and Goodnow and Virgin from his own county, but Howard and W. P. Fessenden, and Davies, and Deblois, and Clifford, and Ruggles, and perhaps Evans, and even the elder Fessenden, from other counties. And besides these, the traditions of Greenleaf, Mellen, Emery, Codman and John Shepley were an inspiration to the young barrister. At such a time, in such a place, under such forensic influences, Mr. Bolster assumed his position at the bar. It is not far to say that there were giants in those days. And while it is true that the giants of these days stand no whit less in stature, and encompass their work with no less a keen and broad mental grasp, we are the heirs of our fathers in the law. The two generations of lawyers through which Mr. Bolster lived and practised, bore the distinct impress of the generation before.

With such an inspiration and inheritance Mr. Bolster

began his work, and through all his life he was true to the old ideals. Though his mind was alert and fresh to the end, and though he was not in any sense old fogyish in his views, I do not think his conceptions of methods of procedure modernized as those of some have done. Like his friend, Judge Walton, I surmise that he sometimes looked back regretfully to the days when the issues were narrowed by pleading, and decided by settled rules of legal premise and conclusion.

As I understand it, the first 30 years after his admission to the bar, he devoted himself, not exclusively, but largely, to legal work. He was interested in politics, and was repeatedly honored by his fellow citizens. Nevertheless, he was first a lawyer. During this time he prepared his handbooks on the assessment and collection of taxes, which from the time of their publication perhaps to the present time are indispensable with municipal officers, consulted and relied upon. Naturally the publication of the work made Mr. Bolster's advice much sought after when troublesome municipal questions arose, and his mind dwelt upon the problems of local self-government. In later years he turned his attention more from the law to business. And in business, in financial matters, he was greatly trusted and his counsel much sought. He was a good citizen of the state. The positions in the senate and executive council and in the state department of banking filled by him were filled with honor to himself and usefulness to the public. He was a good citizen of the towns in another county where his earlier life was spent, and of this city where he lived in mature manhood and until his days were spent. He took a deep interest in Auburn and all of its affairs. His voice was never silent when it could be used for the good

of this city. He was its mayor at an important juncture, and gave to the utmost of his energy and skill. He was faithful to every trust confided to him.

As a lawyer he was painstaking and careful, not brilliant, but safe. Not gifted with eloquence as some are, he was yet direct, forceful and effective in speech, and he won success by his untiring industry and his unquestioned ability. He did not employ deceitful craft. His nature was above it. He served his clients with intense earnestness and fidelity. His relations to his brother lawyers were always friendly. His demeanor, both to the court and his brethren was always courteous and gentlemanly.

As a man he was pure in character and upright in spirit, loyal in friendship and persistently firm in his adherence to the right as he viewed it. His life was without stain."

[*Extract from the remarks of Justice Albert R. Savage, June 3, 1907.*]

CYRUS KNAPP.

It devolves upon me as president of the Androscoggin Bar Association to officially inform the court of the death of Cyrus Knapp of East Livermore, whose membership of our bar began with the formation of the county.

The demise of Judge Knapp occurred at his homestead at Livermore Falls on the 21st day of February last, after an eventful, busy and honorable life of four score years. Our brother Knapp was born in Kingfield, Franklin county, under the shadow of Mount Abram on the 4th day of January, 1827. Left an orphan at the age of four years, he was obliged at a very early day to

depend absolutely upon his own resources; yet he managed unassisted and by his own efforts, to acquire a good academic education. His attention was early directed to the profession of the law and he prosecuted his studies at Winthrop in the office of Seth May, then a lawyer with a large practise and afterwards an honored judge of this court, and was admitted to the Kennebec bar in 1852. In the spring following, Brother Knapp went to Livermore Falls and began the practise of his chosen profession. The county of Androscoggin was organized the following year and he was appointed by the governor the first clerk of courts, and the records of the County Commissioners and of the Supreme Judicial Court, at the establishment and organization of the Court are in the handwriting of our late Brother Knapp. The town of East Livermore constantly honored him, employed him as counsel and made him their representative in the Maine Legislature in the years 1858 and in 1871, and in the latter year he was appointed Judge of Probate to fill the vacancy caused by the resignation of Judge Enos T. Luce, and was afterwards elected to the same office on the republican ticket.

The first term of the Supreme Judicial Court in Androscoggin county was held in Lewiston and began August 27, 1854: Honorable Chief Justice Ether Shepley presided; Charles Clark was sheriff and Cyrus Knapp, clerk. Almost every one who participated at that time in those exercises is now dead. Our honored citizen, Judge Nahum Morrill of this city, our beloved Senator, William P. Frye and Stetson L. Hill, the first Register of Probate and who now resides in California, are among those who survive. With the passing of many men great business changes have taken place,

as indicated by the records of the assessment of the first county tax which shows that the number of polls in Auburn at that time was 527, in Turner, 506, and in Lewiston, 495.

Judge Knapp gave his very best possible attention to the duties of his office as clerk of courts, from the date of his appointment, March 29, 1854, until he turned his office over to his successor, who was elected on account of a change in the political complexion of the county. He was a painstaking, conscientious and impartial Judge of Probate and enjoyed the entire confidence and respect of the bar and the business community. His honesty of purpose, his absolute integrity were never questioned; his judgment on business matters was excellent and his conclusions were such as could only be reached by the application of honest purposes and proper respect for the just and honorable relations of man to man. His originality, independence and self-reliance formed the basis — the foundation for his entire career and the success he attained.

If it is proper at this time to speak in the way of personal reminiscences I can say that I remember Judge Knapp for more than fifty years. His wife to whom he was married in 1856 was my kinswoman and my recollection of her before her marriage and of the relationship, created perhaps a stronger friendship on my part for Judge Knapp than might otherwise have obtained, and I desire at this time and in this presence to express my heartfelt personal tribute to the ability, the integrity, the stability of character and to the political and business courage and fortitude of him who walks no longer with us, but the record of whose good name and character

should be untarnished and whose memory should be treasured and remain forever green.

[Extract from the remarks of Hon. George C. Wing, President of Androscoggin County Bar Association, May 6, 1907.]

JEREMIAH WESLEY MITCHELL.

Jeremiah Wesley Mitchell was born in Auburn, November 5, 1850, and died at Washington, D. C., November 16th, A. D, 1905. He was educated in the public schools of Auburn, and in his young manhood taught school for six years. He then began the study of law in the office of Record & Hutchinson, continuing with Hutchinson & Savage, and was admitted to the bar at Auburn at the September term, A. D. 1875, on October 5th, 1875. He at once began the practise of his profession in his native city. He early took a great interest in the politics of Auburn and in 1881 was elected a member of the school board and in the same years was elected city clerk, holding the latter position in all, eight years, from 1881 to 1886, and again in 1887 to 1890.

He then held the office of city solicitor for one year in 1891, and the following year was appointed judge of the municipal court of Auburn, holding that position until 1903 when he resigned to take a position in the legal department of the Department of Commerce at Washington, which he held at the time of his death.

Judge Mitchell married Miss Mary F. Getchell of Winthrop, who died a few weeks before him. He left two sons, Ezra G. Mitchell, a civil engineer in Washington and Benjamin Mitchell, a student who made his home with his father.

CALVIN RECORD.

Calvin Record, for many years a practitioner at the Bar of Androscoggin County died at the age of 87 at Newark, N. J., whither he had gone to spend his last days with his son, Hon. George L. Record, a prominent and able lawyer of that State and who cared for him dutifully and tenderly for seventeen years.

Mr. Record was for many years a prominent lawyer and citizen of Auburn.

A certain English judge once remarked that no man was as wise as Lord Thurlow looked. It can be said of Mr. Record that no man ever looked the part of a lawyer or possessed a more dignified bearing and distinguished appearance than he. He was the senior partner of Judge Walton when the latter came to this county to practise law. He was concerned in many important trials—perhaps as celebrated a criminal trial as ever took place here—George Knight's murder trial, which is reported in the 43 Maine Report and covers over one hundred and thirty pages; and the case of State vs. Luther J. Verrill for murder, reported in the 54 Maine at page 408. He was our last special pleader in which department of practise he was considered authority. Mr. Record was prominent in social and religious circles, a pleasant conversationalist, possessed a remarkably cheerful and sunny disposition and when in active practise was one of the leading members of the bar.

John L. Reade, member of the Committee on Legal History for Androscoggin, who prepared the sketch of the life of Judge Mitchell, also prepared the sketch of nine other lawyers who have at some time or another practised at this bar and in order that these sketches may be preserved they are printed herein.

JOSIAH LITTLE.

Josiah Little was born in Newburyport, Mass., April 28, 1801. He was the son of Edward Little and was seventh in descent from George Little, the English ancestor of the Littles. He was educated at Bowdoin college, studied law with his father, and was admitted to the bar in 1822. He practised law in Minot, and later in Auburn, where he built the Elm house and occupied it as a residence until about 1838. He was cierk, director and a heavy stock holder in the Lewiston Falls Manufacturing Company, director of the Auburn bank and of the Maine Central railroad, and was agent of the Lewiston Water Power Company when its property and franchise was purchased by the Franklin Company. In 1841 he disposed of his interests in Lewiston and Auburn and moved to Winthrop and a few years later to Portland, where he engaged in the iron and steel business as a member of the firms of Storer & Little and Stevens & Little. After retiring from active business he passed his time at Auburn, Portland and Newburyport. He died August 9, 1865, Mr. Little was four times married, first Sept. 2, 1822 to Mary H. Cummings of Norway; second to Nancy W. Bradford on March 30, 1830; third to Sally Brooks of Scituate, Mass., on May 26, 1835 and fourth to Charlotte Ann Brooks, a sister of Sally, on May 25, 1850. His children were Elizabeth M., T. Edward, Francis B., Mary C., Josiah, Nancy B., Horace Chapin and George. Mr. Little was an ardent advocate of morality and progress, believing it the duty of every man to make the community better for having lived in it, was a liberal contributor to all worthy objects, and his memory is held in affectionate remembrance in the city in which he so long lived.

EDWARD TAPPAN LITTLE

Edward Tappan Little was the son of Edward Little and was born at Newburyport, Mass., December 29, 1809. He came to Auburn with his father's family when it was known as Danville, and spent his whole life there. He was educated at Portland Academy, studied law with his father and was admitted to the Cumberland county Bar in 1833. He was Judge of Probate for Androscoggin county from June 1859 to January 1864. Judge Little was a sound lawyer and safe counselor, and was held in high esteem by the judges of the courts and fellow attorneys as well as by his townsmen. He was a trustee of the Lewiston Falls academy, now the Edward Little High School, and contributed liberally to its endowment. He was selectman of Danville in 1847, 1848 and 1854; was also town agent, a member of the superintending school committee, representative to the legislature from Danville in 1847 and 1855, and from Auburn in 1864 and 1866. He was one of the directors and clerk of the Maine Central Railroad Company. He was twice married, first to Melinda Adams, daughter of Rev. Weston B. Adams of Lewiston, and second Lucy Bliss, daughter of Zeba Bliss Esq., of Taunton, Mass. His children were Edwin Adams, who died April 14, 1876, and Prof. George T. Little of Bowdoin college.

REUEL WASHBURN.

Reuel Washburn was born at Raynham, Mass., May 21, 1793. He graduated at Brown University in 1814. After graduating he read law with Judge Parris three years and upon his admission to the bar settled in Livermore where he resided until his death, which occurred at

the annual town meeting of that town, and while he was engaged in the work of the meeting on March 4, 1878, so that he literally died in harness. He served the town faithfully in several different capacities for many years. He was register of probate for Oxford county from 1821 to 1823, was state senator from Oxford county in 1827 and 1828 and a member of the executive council in 1829. He represented Livermore in the state legislature in 1832-3-4-5 and 1843. He was general assignee under the bankrupt law of 1841, judge of probate for Androscoggin county from 1857 to 1859 and was president of the Androscoggin Bar Association from its organization to his death. He married Miss Delia King of Raynham, Mass., October 19, 1820. He was a Grand Master of the Grand Lodge of Masons of Maine. He was noted for his strict integrity both as a lawyer and as a public official, a prudent and safe counselor, and faithful to every trust imposed in him as citizen, lawyer or judge.

SETH D. WASHBURN.

Seth D, Washburn, son of the above, was born in Livermore, June 21, 1832. He was educated in the common schools and at Farmington academy. He studied law with his father and was admitted to the bar in Androscoggin county in January 1861. He practised law for twelve years and then abandoned practise for farming. He steadily refused public office to which his townspeople would have repeatedly called him, and was held in high esteem by all who knew him. He married Julia Chase of Livermore, March 8, 1871. He died Oct. 3, 1901.

SAMUEL MOODY.

Samuel Moody was born in York, May 12, 1799. He was graduated from Harvard in 1823 and studied law in Fryeburg, in the offices of Stephen Chase and Judge Dana. He married Eliza Chamberlain in 1827 and soon after opened an office at Lisbon, where he resided the remainder of his life. He was appointed postmaster in 1832 and held the office for three years. He was county attorney for Lincoln county, resigning the position in 1838. During the latter part of his life he engaged in lumbering, agriculture and other occupations more than in his profession. He died November 28, 1874 leaving no children.

JABEZ CUSHING WOODMAN.

Jabez Cushing Woodman was born January 23, 1804, in New Gloucester. He graduated from Bowdoin in 1822 and soon after began the practise of law at Poland Corner. He later moved to Minot Corner, prior to 1834, and later to Portland. He died November 8, 1869.

HORATIO GATES CILLEY.

Horatio Gates Cilley was born at Deerfied, N. H., November 26, 1805. He was graduated from Dartmouth in 1826 and began the practise of law at Deerfield. He was a representative from Deerfield to the New Hampshire legislature in 1851 and 1852. He afterward came to Lewiston where he lived until his death on March 13, 1874. His practise of law in Androscoggin county was never extensive.

TIMOTHY LUDDEN.

Timothy Ludden was born in Hartford, Me., in 1807. He was educated in the common schools and at Farmington academy. He engaged in trade in Peru and was for several years a town officer in Peru. He read law in the office of Hon. Charles Andrews, then of Turner and was admitted to the bar in Oxford county in June 1841. He immediately opened an office in Turner where he continued until 1858 when he moved to Lewiston and practised until his death. He was appointed judge of probate for Oxford county and held it until 1856. He was reporter of decisions of the Supreme Judicial Court in 1857 and 1858, compiling Volumes 43 and 44 of the Maine Reports. He married first in 1831, Bethia Forbes of Peru and second in 1837, Sara Conant of Sumner. He died in Lewiston in March 1859. He was a man of studious habits, a good lawyer and an advocate of more than common ability. He took great pride in his ancestry, his grandfather Joseph Ludden being one of the Boston Tea Party, and his mother being a direct descendant of George Soule one of the Mayflower Pilgrims.

GEORGE W. CHASE.

George W. Chase was born in Bridgton, May 18, 1815. He was taken to Portland in his infancy and lived there until he was 16 when his mother married Hon. Edward Little and moved to Danville, now Auburn. He was educated at Portland, Belgrade and Fryeburg academies and at Bowdoin college and studied law with Mr. Little. In 1838 he went to Illinois and

was admitted to the bar there. He married Miss Jenette Clark at St. Louis in 1841 and went to Baton Rouge, La., where he remained three years then returning to Danville and taking up the practise of his profession here. He represented Danville in the legislature in 1850. He died July 17, 1853.

CUMBERLAND COUNTY.

JOSEPH ALVAH LOCKE.

Joseph Alvah Locke, son of Stephen and Lucinda (Clark) Locke, was born December 25, 1843, at Hollis, Maine. He was prepared for college at the high school in Biddeford whither his parents removed in his childhood. After graduating with high honors, he taught in Portland High School for two years. In the meantime he had begun the study of law in the office of Messrs. Davis and Drummond and was admitted to the bar July 28, 1868. He immediately entered upon the practise of his profession at Portland which he successfully pursued till his death, being associated after 1880 with his brother, Ira S. Locke (Bowdoin, 1874) under the firm name of Locke & Locke. He was an able practitioner in all branches but his carefulness and ability led to his becoming to an unusual degree the manager and trustee of large estates. He early became interested in politics, served as representative to the legislature in 1877 and 1879, as senator from Cumberland County in 1880 and in 1881, and was chosen president of the upper house at each of these sessions. The first was made memorable

by the attempt of the opposite party to gain control of the legislature. His judicious management of written protests led to the reference of the matter to the courts and a legal organization of this body. From 1883 to 1887 he was a member of the Governor's Council. He was active in educational matters, serving upon the school committee of Portland for several years and as president of the trustees of the Maine Wesleyan Seminary for nearly a quarter of a century. An earnest Christian, he was always prominent in the Methodist Church and in Sunday School work, organizing and acting as the first president of the state association of Sunday schools. Mr. Locke, while a member of several fraternities, was especially prominent in the Masonic organization in which he attained the thirty-third degree in 1884, and in the various grades of which he had held the highest honors. His death, from angina pectoris, occurred April 21, 1904, at Portland.

Of his life a fellow-lawyer and graduate has said: "Mr. Locke's life always seemed to me to be a singularly successful and happy one. His own habit of mind was one of cheerfulness and content. He had seen the realization of his hopes in a larger degree than happens to most men. Whatever measure of obligation or duty life had laid upon him, he aimed to fulfil to the utmost according to the best of his ability; he had overcome many difficulties and had won the triumphs and wore the honors of his profession. Great confidence was reposed in him which he never abused or betrayed but rather responded sensitively to its utmost claim."

Mr. Locke married, August 27, 1873, Florence E., daughter of Joseph H. and Ruth W. (Merrill) Perley,

who survives him with four of their six children, Miss Grace P. Locke (Bryn Mawr, 1898), John R. Locke, (Harvard, 1901), Allan S. Locke (Harvard, 1907), and Joseph A. Locke, Jr.

[*Bowdoin College Bulletin, new series, number 5.*]

KENNEBEC COUNTY.

EMERY O. BEANE.

Judge Emery O. Beane died at his home in Readfield, Maine, Tuesday, Dec. 13th, 1904, after a brief illness. The Sunday before he had attended church as usual and had taken a keen and active interest in its work.

Although he had passed by fifteen years the three score and ten allotted to man, his eye retained its youthful fire, his mental faculties the keenness of perception and his step the elasticity of a man no more than forty, while he still continued to retain his usual office hours and transact business as heretofore.

He was born in Readfield, near the head of Chandler's pond (now Lake Maranocook), September 10th, 1819, and came from good, old New England stock. He was the second of five children of Oliver and Patience (Nickerson) Bean. Like many other boys in that and kindred sections he passed his childhood on the farm and received his education from the district school, supplemented with a short course at Kent's Hill and a few terms at Monmouth Academy.

Possessing a decided preference for the legal profession soon after leaving school he entered the law office of

Timothy O. Howe at Readfield, where he pursued a long course of study under the instruction of one of the ablest practitioners of Maine at that time. In 1843 he was admitted to the bar, and went to Hallowell, where he began the practise of law with the eminent lawyer, Henry W. Paine. In the following year, Judge Beane returned to Readfield, where he opened an office, and in another year went into partnership with Mr. Howe, under the firm name of Howe & Beane. In 1848 Mr. Howe went West, and Judge Beane conducted the business alone. In this same office he remained 28 years, building up a large practise, and establishing a reputation for integrity which has ever been one of his chief characteristics.

On October 8, 1844, he was united in marriage with Elizabeth Hunter, daughter of Col. John O. Craig of Readfield, the union resulting in the birth of two sons, Nelson Shepard Beane of Malden, Mass., and Hon. Fred Emery Beane of Hallowell. Mrs. Beane died Jan. 22, 1892. Later he married Mrs. O. O. Nickerson.

The younger son, Fred, having embraced the legal profession, he was, by his father, taken into partnership in 1876. In the fall of 1878 the former opened a law office in Hallowell, which was followed soon after by the firm of Beane & Beane. In 1890 the firm opened an office in Gardiner, and operated in the three places the senior partner remaining in Readfield.

In politics Judge Beane was originally a Whig, and after the dissolution of that party became a Democrat to the principles of which belief he always steadily adhered. In 1851 he was elected to the legislature, and in 1856 was chosen a state senator. When the venerable Alonzo Garcelon was governor, in 1879, he appointed Judge Beane one of the trustees of the Maine State

College, in which capacity he served seven years. In 1880 he was elected judge of the probate and insolvency court of Kennebec county, by a good majority, securing the votes of many Republicans, which position he held four years. Like his father before him he was a strong Universalist, and was a leading member of the church at Readfield.

Judge Beane early partook of the rites of Masonry, and for a half century had been a member of Lafayette Lodge, No. 48, of Readfield. He was a past master of the lodge, and a few years ago was made an honorary member of that body.

Personally Judge Beane was a man among men. Honesty and uprightness in his dealings with all were prominent points in his character, and these with the true manliness of his nature could not fail to win for him the confidence and friendship of his fellow men. He was a genial acquaintance, a good neighbor, and a true friend. As a lawyer, he was noted for his devotion and loyalty to his clients, and his earnestness in working for their interests. That the justices of the supreme court of probate held his judgment in esteem is evidenced by the fact that during the whole term of his office, not one of his decisions was by them set aside.

L. D. CARVER.

Leonard Dwight Carver, the honored State Librarian of Maine, died at his residence in Augusta, Saturday, Sept. 18th, 1905. Ten days before his death he submitted to a severe surgical operation and never rallied from the shock.

Mr. Carver was born in Lagrange, Me., Jan. 26th, 1841, the son of Cyrus and Mary (Wadsworth) Carver,

and the descendant of that substantial colonial stock whose type has done and is still doing so much for the best interests of New England. Born in the country, reared upon a farm, his splendid physique attested the strength and vigor that such a natural and wholesome life affords. His early education was received at the common schools, and he was fitting for college at Foxcroft Academy, when in April, 1861, came the summons of the Civil War. He hesitated not a moment in answering the call, and leaving his books and his well-planned future he enlisted in the Second Maine Regiment, which was the first to report for duty from this state. He took part in every engagement of his regiment until it was mustered out in the summer of 1863, and as his comrades can affirm, no soldier did his duty more faithfully than he.

Returning from the field he resumed his studies, entered Colby, then Waterville College, and graduated with honors in the class of 1868, among his classmates being Professor Julian D. Taylor, R. Wesley Dunn, Esq., and the late Frederick A. Waldron, Esq., all of Waterville.

After graduation Mr. Carver took up temporarily the profession of teaching, for which he was admirably fitted, and was successively principal of the Hallowell, Me., high school in 1869-70, of Bridgton Academy in 1871, of the Rock Island, Illinois, high school in 1872, and superintendent of public schools in Kewanee, Illinois, in 1873 and 1874. He then returned to Waterville and entered upon the study of law in the office of Hon. Reuben Foster and was admitted to the Kennebec bar in 1876. He continued the active practise of his profession in Waterville until 1890, a

part of the time in partnership with Hon. S. S. Brown, and he gained the confidence of the public as a sound and safe counsellor and a man of strictest integrity. During those years he served for a long time as city clerk, and a member of the school board.

At the death of Hon. Josiah S. Hobbs in October, 1890, Mr. Carver was appointed by Gov. Burleigh to the office of State Librarian, and for the past 15 years he devoted his best talents to this work which he loved so well, and in which he gained well-merited recognition, having been president of the State Librarians' Association and also of the National Association of State Librarians.

The rapid growth of our state library, both in the quantity and quality of its books and the adoption of new methods by which its treasures may be more available to all the citizens of the state, will long remain as a monument to his intelligent and faithful service. He had looked forward to the time when a new building for the state library would be erected and he could then administer its affairs and develop its usefulness according to his well-considered plans, but that hope he was not destined to see fulfilled.

Soon after his appointment, Mr. Carver moved with his family to this city and here, too, as in his former home, he took a deep interest in municipal affairs and served ably in their administration.

Such in brief is the record of his public life, a life filled with duties and responsibilities well performed, but it is simple justice to say that their mere enumeration does not reveal the character of the man. That was known to his friends and they were legion.

As a soldier he was courageous and unflinching; as a teacher, conscientious and successful; as a lawyer,

sound and reliable; as a public official, honest and efficient; as a friend, loyal and charitable, and as a man, kindly, just and sincere. His modesty and phlegmatic temperament sometimes concealed the strength of his intellect, but his reasoning powers were so strong and well trained, his judgment so well balanced, and his mind so free from prejudice that had ambition spurred him on in that direction, judicial honors might not have been unexpected. He was social and yet he cared not for society as such. He loved his books and his family and in their companionship he was happy and content.

His family life was singularly congenial. On August 10th, 1877, he married Miss Mary Caffrey Lowe of Waterville, who was also a graduate of Colby in the class of 1875, and who has always been a loving co-worker with him in thought and life. Two children have been born to them, Dwight, who died at the age of six, and Ruby, who is also a graduate of Colby in the class of 1904, and now a teacher in Gould's Academy, at Bethel, Me. Thus husband, wife and daughter have been bound closely together by more than ordinary ties and interests, and to the wife and daughter who now constitute the broken circle, goes out in large measure the sympathy of the city and the state he served so faithfully and of the countless friends who knew and loved him well.

GEORGE C. SHELDON.

George C. Sheldon died Wednesday, Nov. 9, 1905, after a long illness, at the former home of Mrs. Sheldon in Sidney, where he had been during the greater part of the summer and fall. He was born in the town of Waldo, in Waldo county, Sept. 1, 1862, and was the son

of Ephraim F. and Helen M. (Whitney) Sheldon. He received his early education in the schools of his native town, afterward taking a course of study at the Castine Normal school. Later, he entered the Coburn Classical Institute, from which he graduated in 1888. After graduating from the Institute, he entered Colby College, and graduated in 1893. Deciding to adopt the practise of law as a profession, he entered the law office of Judge W. C. Philbrook of Waterville, and in 1895 was admitted to the bar of Somerset county. He then opened a law office in the town of New Portland, where, in addition to his practise, he served as superintendent of schools in 1895 and 1896.

In 1897 he came to Augusta, and on May 1, of that year, opened an office in the city. He succeeded in building up a good business, and April 1, 1899, he took a partner, M. E. Sawtelle, who has since been associated with him, under the firm name of Sheldon & Sawtelle.

On July 5, 1893, Mr. Sheldon was united in marriage with Miss Alice M. Sawtelle of Sidney, a sister of his law partner, the union resulting in two children, a daughter, Bertha S., who died May 24, 1903, and one son, Geo. C. Sheldon, Jr., who, with the widow, survives him. In 1901 Mr. Sheldon was chosen a member of the common council, where he served two years, and was then chosen a member of the board of aldermen, serving one year.

Mr. Sheldon was a member of the Sons of Veterans, and past captain of Henry G. Staples Camp, of Augusta, having been chosen captain in 1902. He was also a member of Highland Lodge, A. O. U. W., Asylum Lodge, I. O. O. F., of the Royal Arcanum, and of the Kennebec Bar Association.

In religious preference he was a Unitarian, and in politics a Republican. He was a strong worker for the party, and did good work on the stump in New York, during the McKinley and Roosevelt campaign, in 1900, and also in the same field during the Roosevelt and Fairbanks campaign, in 1904.

PENOBSCOT COUNTY.

WILLIAM COPELAND CLARK.

William Copeland Clark, who died at Lincoln, Maine, September 10, 1904, was born in that part of Brewer, in Penobscot County, which is now Holden, August 14, 1835, on his father's farm.

His parents were Harvey Dexter and Eliza Ann (Copeland) Clark.

He was educated in the schools of Brewer and at Hampden Academy. He read law in the office of Hon. Hannibal Hamlin, who was Vice President of the United States during the war of the Rebellion.

He was admitted to the Maine bar at Bangor, February 4, 1859.

He opened a law office at Lincoln, Penobscot county, in April, 1859.

He married, July 11, 1860, Eliza Catherine Rice, second child of John W. and Catherine Boardman (Remick) Rice of Hampden, Maine.

In August, 1862, he resigned the office of Supervisor of schools to which he had been elected soon after he settled in Lincoln, to enter the volunteer service for the suppression of the Rebellion. He was most actively

engaged in recruiting a full company which with others he succeeded in doing in twelve days time. This company was attached to the 18th regiment Maine Volunteers. He was commissioned by Gov. Israel Washburn as its captain.

This company, known as company A, was mustered into the United States service August 21, 1862. By order of the war department the regiment's name was subsequently, in 1863, changed to that of the First Maine Heavy Artillery.

He was a member of the Maine House of Representatives in 1871, and in 1875.

He was clerk of the United States Senate Committee on Post-offices and Post Roads in 1876-77, his former law preceptor, Hon. Hannibal Hamlin, being then the chairman of that committee.

He was for a number of years chairman of the board of selectmen of Lincoln and held other town offices, among them being that of town treasurer.

Among the students who commenced the study of law in his office were Charles S. Sawyer of Nashua, N. H., who died in the Rebellion in 1861; Albert W. Weatherbee, who practised in Bangor and Lincoln; Tascus Atwood, now practising in Auburn, Maine; Louis C. Stearns, now practising in Bangor; William P. Allen of Caribou; Judge G. Willard Johnson of Rumford Falls; and Hugo Clark of Bangor.

He had been president of the First Maine Heavy Artillery Regimental Association.

He was an earnest worker for all that had for its object the growth and welfare of the town of Lincoln, and gave freely of his time and counsel to all local enterprises.

He always discouraged spiteful and unnecessary litiga-

tion and was moderate in his charges to clients, whose confidence he retained in the fullest measure.

As a public speaker, on the stump and elsewhere, his calm, cool and logical method of treatment of political subjects among his own people carried weight and influence.

His widow, and three sons, Walter, J. Fred, and Hugo, survive him.

JOSIAH CROSBY.

Josiah Crosby, son of Oliver and Harriet (Chase) Crosby, was born November 24, 1816, at Dover, N. H. His parents removed to Atkinson, Maine, where his childhood was passed. He received his early education in the public schools and was prepared for college at Foxcroft Academy. After graduating with honors when only eighteen years of age, he studied law with Hon. Frederic Hobbs of Bangor, and Hon. Charles P. Chandler (Bowdoin, 1822), and was admitted to the Piscataquis County bar in September, 1838. He practised his profession for a short time in company with his last preceptor at Dover, Me.; then at Levant, now Kenduskeag, Me., for a year and a half; at Exeter, Me., for five years; and in February, 1845, settled in Dexter, Me., where he continued his professional work till the close of his long life, his son, Josiah Willis Crosby (Bowdoin, 1882), being associated with him during the last twenty years.

Mr. Crosby, while enjoying a large practise in civil and equity suits, was known throughout the state for his success in criminal cases, his ability in examining witnesses and his quickness in detecting the weak places in his antagonist's line of defence, serving him in good

stead. Always interested in politics, he became a republican on the disorganization of the whig party, and represented Dexter in the state legislatures of 1857, 1863, and 1865. In 1867 and 1868 he was a senator from Penobscot County and served as president during the latter session. Much of the legislation of that period bears the impress of his active mind. In later years he was connected with the democratic party, and was its candidate for representative to Congress in 1890. He was earnestly interested in all that concerned the welfare of the community and was largely instrumental in the building of the Newport and Dexter Railroad. The circumstance that best showed the esteem in which he was held by his neighbors was his annual election as moderator of the town meeting for a period of nearly forty years. He was a member of the Maine Historical Society, president of the Phi Beta Kappa Fraternity, Alpha of Maine, and served with efficiency on the Board of Overseers of the college from 1880 till his death, rarely being absent from any meeting. Suffering from ill health in his youth, he lived to enjoy an old age of remarkable vigor, a circumstance he was accustomed to ascribe to his temperate habits of life coupled with a wise absorption in his daily work. He died from a complication of diseases incident to old age on May 5, 1904.

Mr. Crosby married, first, February 15, 1844, Henrietta, daughter of Henry Hill, Esq., of Exeter, Maine, who died December 28, 1846; and second, February 27, 1849, Mary Bradbury, daughter of Simon and Lucinda (Conant) Foss, who survives. Two sons by the first marriage died in infancy. Seven of the nine children by the second marriage survive their father: Mrs. Henrietta H. Blaisdell of Fairmount, Minn., Mrs. May Stickney of

St. Paul, Minn., Oliver Crosby (University of Maine, 1876) of St. Paul, Minn., Simon Percy Crosby (University of Maine, 1879) of Braham, Minn., J. Willis Crosby (Bowdoin, 1882) of Dexter, Me., and Misses Annie C. and Clara I. Crosby of St. Mary's College, Dallas, Texas. His son, Charles J. F. Crosby (Dartmouth, 1895), died April 29, 1898.

[*Bowdoin College Bulletin, New Series, No. 5.*]

SAGADAHOC COUNTY.

F. E. SOUTHARD.

The news of the sudden death early this morning (Dec. 20, 1906) of Frank E. Southard, Esq., was received by his many friends with sincere sorrow, which was heightened by the unexpectedness of the sad event. Since his recovery from his severe illness of last winter, Mr. Southard had apparently been improving steadily, and had had no warning of any return of his former malady, which, however, must have been secretly preying upon him. He had been regularly at his office up to last Tuesday noon, when he went home complaining of feeling ill. From that time he rapidly grew worse, until between two and three this morning when he passed away. The end came painlessly and peacefully and he retained his consciousness almost to the last.

Mr. Southard was born in Exeter, Maine, Dec. 14, 1854. He attended the common schools and the Maine State College at Orono and later studied law in the office of Baker & Baker of Augusta, and was admitted to the bar in 1882, engaging at once in the active practise of

his profession in Augusta, until the winter of 1895 when he removed to Bath, where by his energy and ability he won a place among the leading attorneys in this State.

He early made the influence of his strong and vigorous personality felt in the political and business interests of the community. He served for several years in the City Council both in the lower Board and as Alderman, and his time, his counsel and his purse were ever ready to forward the best interests of his adopted home. He was one of the incorporators, and for several years a member of the Executive Board of the Bath Trust Co.

Mr. Southard enjoyed a large legal practise, and it may be truly said of him, that no client seeking the protection or vindication of his rights was ever turned away because he was without money or friends or influence. When once engaged in a cause, it was no half-hearted interest which he displayed, but his heart and soul were in the matter and he gave his strength, his knowledge and his labor freely and without stint, utterly regardless of the possible wealth, standing or power of his adversary. Quick to think, quick to speak, and quick to act, no man was less swayed by considerations of mere policy. And if, as was inevitable in so virile a character, he antagonized some, he could count his friends by the score, and even his enemies could not but admit and admire his many sterling qualities. Impulsive and outspoken at all times, no one in Bath ever had to ask where Frank Southard stood upon any question of public moment. One always knew just where to find him, and no one could be more loyal to his friends than he.

He was, for all his prominence in the life of our city, a man averse to all forms of show or ostentation, and as

those who knew him best can avouch was modest and unassuming to a degree. He had a big heart, swelling with pity for the sufferings of others and with generous indignation at all forms of injustice and wrong, and many a deed of unheralded charity may be traced to his hand. He will be long and sincerely missed by his business associates and friends, and has left a place in our city which no one can fill just as he filled it.

He is survived by his wife and child, Frances M., and by his mother, Mrs. Caroline Richards.

He was a member of Solar Lodge, F. & A. M., Montgomery & St. Bernard R. A. C., and Dunlap Commandery, K. T.

[*Bath Daily Times, Dec. 20, 1906.*]

WALDO COUNTY.

JOSEPH WILLIAMSON.

Hon. Joseph Williamson died in Belfast, December 4, 1902, at the age of 74 years. He had been in his usual health until within one week prior to his decease. He was born in Belfast, October 5, 1828. He came of an old and illustrious family in this State, and his father was a lawyer before him. He was educated in the schools of his native city and at Bowdoin College, graduating in 1849. He read law in the office of his father, a prominent lawyer of Belfast, and was admitted to the bar in 1852, and continued in the practise of his profession, uninterruptedly up to the time of his death.

He was a painstaking, careful and methodical lawyer. He never sought political office, although during his life-

time he held the office of Police Judge, Alderman and City Solicitor. His spare time was devoted to literary labor and historical research and he wrote a valuable history of his native city. He was president of the Waldo County Bar Association since its organization in January, 1888, and president of the Waldo County Law Library Association since 1861, and to him should be given a great deal of credit for the exceedingly well selected law library of the County of Waldo. He took a deep interest in the public library of his native city, was chairman of its Board of Trustees since it was established, and devoted much time and keen interest to the library, having the superintendence of the selection of the books and of all matters pertaining to its management.

Judge Williamson was a wise counselor, a gentleman in the best sense of the word at all times, a distinguishing and marked characteristic being his uniform courtesy and politeness. In his historical researches and by his literary ability he attained an enviable reputation as a man of letters.

WASHINGTON COUNTY.

BENJAMIN BIXBY MURRAY.

Benjamin Bixby Murray, son of Benjamin B. and Deborah (Hooper) Murray, was born in Norway, Me., June 19, 1828, and his early years were spent in the town of Turner, Androscoggin County.

He studied law and was admitted to the bar in 1857, and was in practise at this bar at the beginning of the Civil war.

In April, 1861, he was judge advocate on the staff of Maj. Gen. J. H. Butler, of the First Division of the Militia of Maine, and was ordered on duty at Bangor, to assist in organizing the regiments raised in Eastern Maine, under the first call of the President. Subsequently he raised a volunteer company and joined the 15th Regiment of Maine Volunteer Infantry, in which he served as captain and lieutenant-colonel. This regiment was attached to Major-General Butler's expedition, which, in co-operation with Admiral Farragut's fleet, captured New Orleans in April, 1862; it also participated in Major-General Banks' campaign in Texas, and on the Red River, and was with Sheridan in the Shenandoah valley in 1864.

After the close of the war it was stationed in the Department of the South until its muster out, returning to Maine under command of Col. Murray in July, 1866, having served almost five years. Gen. Murray was with his regiment until the close of the war, and participated with it in every expedition and battle in which it had a part.

While serving in the Department of the South he was appointed provost marshal general on the staff of Maj. Gen. Charles Devens.

As a soldier Gen. Murray was thoughtful and careful of his men. Himself an example of sobriety and obedience, brave and skilful in action, he was respected and esteemed wherever he served. On several occasions he was selected to perform critical services which required not only courage but great prudence and skill, and so discharged them as to win the warm commendations of his superior officers.

Briefly stated, the military services of Gen. Murray

may be characterized by an unfaltering faithfulness to the duty assigned to him, intelligent obedience of the orders of his superiors, the meeting of every emergency thrust upon him with unwavering and unfailing skill and efficiency.

He was breveted by the President, brigadier general, to date from March 13, 1865. May 7, 1867, he was commissioned as captain in the regular army, which commission he declined.

Following this service in time of war his fellow citizens on many occasions selected him as their representative in places of trust in civil life, and in seeking one who could best serve, the President of the United States and the Governor of Maine, on more than one occasion, recognized his ability and worth and by special appointment called him to important public station, and there, as in military service, he maintained the highest degree of efficiency and usefulness.

In 1868, he was appointed deputy collector of internal revenue for the Fifth district of Maine. In 1869, he was state senator from Washington county, and the same year was appointed adjutant general by Gov. Chamberlain to fill the vacancy caused by the resignation of Gen. John C. Caldwell, which office he held for seven years. In 1876, he was appointed by the Hon. Lot M. Morrill, then Secretary of the Treasury, a special agent of the Treasury department, and soon after assistant financial agent of the United States at London.

Upon his return to Maine he was elected a representative in the legislature from Pembroke, and in March, 1878, was appointed by President Hayes United States marshal for the District of Maine, which office he held for four years and then resumed practise at Pembroke.

In March, 1889, he was appointed by Gov. Burleigh a member of the state valuation commission. In 1896, he was again elected a representative to the legislature. In 1893 and 1894, he was county attorney from Washington county.

He was an active member of the Grand Army and the Loyal Legion, and at the time of his death was senior vice commander of the Maine Commandery, and, at its last meeting, would undoubtedly have been elected its commander but for his untimely death. He was elected a member of the Loyal Legion, April 12, 1882.

As an officer of the Washington County Bar Association he served faithfully and well, and painstaking and accurate service we all credit to Brother Murray.

It was good fortune to be favored with his friendship, to meet him in his active practise, and to know him in his home.

To him friendship meant more than mere words — it meant the going out of his way to assist another who had claim upon his regard. In his practise he was noted for his courteous treatment of the opposing attorney, and his unfailing respect for the court, and no client ever had just cause of complaint for duty ill-performed.

It was his good fortune to be blessed with a home in harmony with the ideals he cherished and the distinction he had won, and it meant more to him than all else beside.

[*Extract from remarks of Hon. George M. Hanson, April 23, 1907.*]

YORK COUNTY.

COL. FERDINAND W. GUPTILL.

Col. Ferdinand W. Guptill, late of Saco, died Dec. 23, 1904, at the age of 67. His boyhood days were passed in the beautiful town of Cornish; he obtained his education in the schools of that town, and also at Limerick Academy, an institution of pre-eminent standing in this County. He was not blessed with riches, but as a hard working boy obtained a thorough, practical education. He came to Saco to reside, and continued the study of law which he commenced while a student at Limerick Academy. He taught school, and was a faithful, proficient instructor. He made Saco and Old Orchard his home the greater part of the time since 1860.

Animated with patriotic resolutions, he served as a recruiting officer during the Civil war until the thirty-second regiment was formed, in which he enlisted, and was commissioned a sergeant. He also served with efficiency in the Treasury Department of the United States in connection with its law service, and later was collector of internal revenue. He has been deputy collector of customs for York County for more than twenty years, served on the staff of Gov. Robie from 1883 to 1887, discharging each duty in a creditable, praiseworthy and modest manner, ever bestowing upon details the most painstaking care. He was the first city solicitor of Saco, and his moderation and prudence, together with his legal knowledge, were of great assistance in the establishment of the first city government, in the preparation of its ordinances, and its general routine of business. The deceased always regarded the commissions that he held

as public trusts, and no confidence reposed in him was ever betrayed; he was not a man of many words or given to matters of public display or notoriety. He was a conservative, careful adviser and counsellor, and in the years of his practise, when he was actively engaged in the trial of causes, principally in Saco, he obtained an enviable reputation for the terse, methodical manner in which he prepared his cases, and in which he conducted their trial, and presented their merits for judicial decision. He was not a man over confident in his own ability, but inclined to be apprehensive, and sometimes super-sensitive. The rude shocks of life, the cruel blasts of the tempest, did not harden him and render him callous, but, if anything, made him the more wary of the attacks incident to public and professional life. His word was good; his engagements with his brothers at the Bar were always executed. He was a man to be relied upon in the emergencies of life.

Tall and stately in his physique, he was every inch a soldier, a military man in his bearing, who had the brave spirit and patriotic devotion to his country that emphasizes men of that profession, accompanied with no ostentation or display; one of those quiet men who, like the great general of the Civil war, thought and then acted. He was a member of Sheridan Post, G. A. R., also affiliated with several of the secret organizations. He leaves a widow, a brother and sister.

[*Extract from the remarks of Hon. James O. Bradbury, May 2, 1905.*]

Amended By-laws of the

Maine State Bar Association

ARTICLE 1. MEMBERSHIP.

Members of the Bar in this State shall be eligible to membership and shall be elected at any legal meeting, upon the nomination of the committee on membership.

ARTICLE 2. OFFICERS.

The officers of this association shall be a president, three vice-presidents, an executive committee, a committee on law reform, a committee on legal education and admission to the bar, a committee on legal history, a secretary and a treasurer. All these officers shall be elected by ballot at the annual meeting and shall hold office until others are elected and qualified in their stead.

Other standing committees than those above specified may be provided by the association from time to time as may be found expedient.

ARTICLE 3. PRESIDENT.

The president, or in his absence one of the vice-presidents, shall preside at all meetings of the association. The president shall be, *ex-officio*, a member of the executive committee.

ARTICLE 4. EXECUTIVE COMMITTEE.

The executive committee shall consist of four members beside the president. They shall have charge of the affairs of the association, make arrangements for meetings, order the disbursement of the funds of the association, audit its accounts, and have such other powers as may be conferred on them by vote at any meeting of the association.

ARTICLE 5. COMMITTEE ON LAW REFORM.

The committee on Law Reform shall consist of five members. It shall be the duty of this committee to consider and report to the association such amendments of the law as should in their opinion be adopted; also to scrutinize proposed changes of the law, and when necessary report upon the same; also to observe the practical working of the judicial system of the State and recommend by written or printed reports, from time to time, any changes therein which experience or observation may suggest.

ARTICLE 6. COMMITTEE ON LEGAL EDUCATION.

The committee on legal education shall consist of one member from each county represented in the association. Its duty shall be to prepare and report a system of legal education and for examination and admission to the practice of the profession in this State, and report from time to time such changes in the system of examination and admission as may be deemed advisable.

ARTICLE 7. COMMITTEE ON MEMBERSHIP.

The committee on membership shall consist of one member from each county represented in the association. All applications for membership shall be made to the member from the county where the applicant resides, if any, otherwise to any member of the committee. Applicants shall be nominated for membership by the concurrence of three members of this committee.

ARTICLE 8. COMMITTEE ON LEGAL HISTORY.

The committee on Legal History shall consist of so many members as the association shall, from year to year, appoint.

Its duty shall be to provide for the preservation in the archives of the society, of the record of such facts relating to the history of the profession as may be of interest, and of suitable written or printed memorials of the lives and characters of distinguished members of the profession.

ARTICLE 9. SECRETARY.

The secretary shall keep the records of the association, have charge of its archives, and discharge such other duties as the association may require.

ARTICLE 10. TREASURER.

The treasurer shall collect and receive the dues of the association, keep and by order of the executive committee disburse its funds, and discharge such other duties as may pertain to his office. Any person may fill the office of both secretary and treasurer if elected thereto. A vacancy occurring in either of these offices may be filled by appointment of the executive committee.

ARTICLE 11. MEETINGS.

The annual meeting of the association shall be held on the second Wednesday of January, at such place in the city of Augusta in the years in which the legislature shall be in session, and in the alternate years at such place and time as the executive committee may determine. Special meetings may be called by the president, on application in writing of five members, ten days' notice of which by mail shall be given to each member by the secretary, stating the object of the meeting. Fifteen members shall constitute a quorum at any meeting.

ARTICLE 12. ANNUAL DUES.

The annual dues shall be one dollar for each member, payable to the treasurer on or before the first day of June in each year.

Failure to pay the annual due for two years in succession shall terminate the membership of the person in default.

ARTICLE 13. EXPULSION OF MEMBERS.

Any member may be expelled for misconduct, professional or otherwise, by a two-thirds vote of the members present at any meeting after proper notice of the charges; and all the interest of any member in the property of the association upon the termination of his membership, by expulsion, resignation or otherwise, shall thereupon vest absolutely in the association.

ARTICLE 14. AMENDMENTS

These by-laws may be amended only by a two-thirds vote of the members present at an annual meeting of the association.

OFFICERS SINCE ORGANIZATION.

Presidents.

CHARLES F. LIBBY, Portland, 1891 to 1896.

HERBERT M. HEATH, Augusta, 1896 to 1897.

FRANKLIN A. WILSON, Bangor, 1897 to 1898.

CHARLES E. LITTLEFIELD, Rockland, 1898 to 1899.

WALLACE H. WHITE, Lewiston, 1899 to 1902.

JOSEPH W. SYMONDS, Portland, 1902 to 1903.

JOSEPH C. HOLMAN, Farmington, 1903 to 1904.

GEORGE D. BISBEE, Rumford Falls, 1904 to 1905.

ORVILLE D. BAKER, Augusta, 1905 to

Secretary and Treasurer.

LESLIE C. CORNISH, Augusta, 1891 to 1907.

NORMAN L. BASSETT, Augusta, 1907 to

Members of the

Maine State Bar Association

1906-1907

Androscoggin County.

Tascus Atwood, - - -	Auburn.
W. W. Bolster,* - - -	Auburn.
D. J. Callahan, - - -	Lewiston.
Seth M. Carter, - - -	Auburn.
J. G. Chabot, - - -	Lewiston.
W. H. Cornforth, - - -	Auburn.
Franklin M. Drew, - -	Lewiston.
Willard F. Estey, - - -	Lewiston.
S. M. Farnum, Jr., - -	Auburn.
P. H. Kelleher, - - -	Auburn.
Rogers P. Kelley, - - -	Auburn.
Jesse M. Libby, - - -	Mechanic Falls.
F. E. Ludden, - - -	Auburn.
Harry Manser, - - -	Lewiston.
J. H. Maxwell, - - -	Livermore Falls.
George G. McCarthy, - -	Lewiston.
D. J. McGillicuddy, - -	Lewiston.
Frank A. Morey, - - -	Lewiston.
John A. Morrill, - - -	Auburn.

*Deceased.

Wm. H. Newell, - - -	Lewiston.
Henry W. Oakes, - - -	Auburn.
James A. Pulsifer, - - -	Auburn.
John L. Reade, - - -	Lewiston.
Herbert C. Royal, - - -	Auburn.
Fred N. Saunders, - - -	Lewiston.
W. B. Skelton, - - -	Lewiston.
Reuel W. Smith, - - -	Auburn.
A. E. Verrill, - - - -	Auburn.
W. H. Watson, - - -	Auburn.
Wallace H. White, - - -	Lewiston.
Wallace H. White, Jr., - -	Lewiston.
George C. Wing, - - -	Auburn.
George C. Wing, Jr., - -	Auburn.
George H. Winn, - -	Lewiston.

Aroostook County.

James Archibald, - - -	Houlton.
Walter Cary, - - - -	Houlton.
Charles F. Daggett, - - -	Presque Isle.
F. G. Dunn, - - - -	Ashland.
Willis B. Hall, - - -	Caribou.
Ira G. Hersey, - - -	Houlton.
E. A. Holmes, - - -	Caribou.
Wallace R. Lumbert, - -	Caribou.
Howard Pierce, - - -	Fort Kent.
Llewellyn Powers, - - -	Houlton.
Beecher Putnam, - - -	Houlton.
H. W. Safford, - - -	Mars Hill.
R. W. Shaw, - - -	Houlton.
S. S. Thornton, - - -	Ashland.

Cumberland County.

George H. Allan, - - -	Portland.
P. P. Baxter, Jr., - - -	Portland.
George E. Bird, - - -	Portland.
William Bradley, - - -	Portland.
Wilford G. Chapman, - -	Portland.
Frederick V. Chase, - -	Portland.
Albro E. Chase, - - -	Portland.
Nathan Clifford, - - -	Portland.
Charles S. Cook, - - -	Portland.
John H. Dana, - - -	Portland.
Liberty B. Dennett, - -	Portland.
James L. Doolittle, - -	Brunswick.
Morrill N. Drew, - - -	Portland.
Josiah H. Drummond, Jr., -	Portland.
Isaac W. Dyer, - - -	Portland.
John H. Fogg, - - -	Portland.
James C. Fox, - - -	Portland.
M. P. Frank, - - -	Portland.
Eben W. Freeman, - - -	Portland.
Clarence Hale, - - -	Portland.
Frederick Hale, - - -	Portland.
C. A. Hight, - - - -	Portland.
Leroy S. Hight, - - -	Portland.
Wm. M. Ingraham, - -	Portland.
Howard R. Ives, - - -	Portland.
Hiram Knowlton, - - -	Portland.
W. J. Knowlton, - - -	Portland.
Seth L. Larrabee, - - -	Portland.
C. Thornton Libby, - -	Portland.
Charles F. Libby, - - -	Portland.
George Libby, - - -	Portland.

Ira S. Locke, - - -	Portland.
Wm. H. Looney, - - -	Portland.
John J. Lynch, - - -	Portland.
Chas. P. Mattocks, - -	Portland.
John F. A. Merrill, - -	Portland.
Carroll W. Morrill, - - -	Portland.
Wm. H. Motley, - - -	Woodfords.
Augustus F. Moulton, - -	Portland.
David E. Moulton, - - -	Portland.
George F. Noyes, - - -	Portland.
Irving W. Parker, - - -	Portland.
James R. Parsons, - - -	Portland.
Franklin C. Payson, - -	Portland.
B. S. Peacock, - - -	Freeport.
Barrett Potter, - - -	Brunswick.
Wm. L. Putnam, - - -	Portland.
Edward M. Rand, - - -	Portland.
Edward C. Reynolds, - -	Portland.
F. W. Robinson, - - -	Portland.
J. H. Rousseau, - - -	Brunswick.
Clarence E. Sawyer, - -	Brunswick.
George M. Seiders, - -	Portland.
David W. Snow, - - -	Portland.
H. W. Swasey, - - -	Portland.
Joseph W. Symonds, - -	Portland.
Benj. Thompson, - - -	Portland.
Edward F. Tompson, - -	Portland.
Levi Turner, - - - -	Portland.
H. M. Verrill, - - -	Portland.
Harry R. Virgin, - - -	Portland.
Augustus H. Walker, - -	Bridgton.
F. S. Waterhouse, - - -	Limerick.
John A. Waterman, - -	Gorham.

Lindley M. Webb, - - -	Portland.
Richard Webb, - - -	Portland.
John Wells, - - - -	Portland.
John S. White, - - -	Naples.
Robert T. Whitehouse, - -	Portland.
Virgil C. Wilson, - - -	Portland.
Albert S. Woodman, - -	Portland.
Edward Woodman, - -	Portland.

Franklin County.

Harry F. Beedy, - - -	Phillips.
S. Clifford Belcher, - -	Farmington.
Cyrus N. Blanchard, - -	Wilton.
Frank W. Butler, - - -	Farmington.
A. F. Fenderson, - - -	Farmington.
E. O. Greenleaf, - - -	Farmington.
Joseph C. Holman, - -	Farmington.
N. P. Noble, - - -	Phillips.
Elmer E. Richards, - -	Farmington.
Philip H. Stubbs, - - -	Strong.
Josiah H. Thompson, - -	Farmington.
F. E. Timberlake, - - -	Phillips.

Hancock County.

Wm. O. Buck, - - -	Bucksport.
F. Carroll Burrill, - - -	Ellsworth.
B. E. Clark, - - - -	Bar Harbor.
Edward S. Clark, - - -	Bar Harbor.
O. P. Cunningham, - - -	Bucksport.
L. B. Deasy, - - - -	Bar Harbor.
O. F. Fellows, - - -	Bucksport.

Geo. R. Fuller, - - -	S. W. Harbor.
L. F. Giles, - - - -	Ellsworth.
Hannibal E. Hamlin, - -	Ellsworth.
A. W. King, - - - -	Ellsworth.
Sumner P. Mills, - - -	Stonington.
Seth W. Norwood, - - -	S. W. Harbor.
John A. Peters, - - -	Ellsworth.
E. P. Spofford, - - -	Deer Isle.
B. E. Tracy, - - - -	Winter Harbor.
Geo. M. Warren, - - -	Castine.
Chas. H. Wood, - - -	Bar Harbor.

Kennebec County.

E. C. Ambrose, - - -	Readfield.
Charles L. Andrews, - -	Augusta.
Orville D. Baker, - - -	Augusta.
Norman L. Bassett, - -	Augusta.
Geo. K. Boutelle, - - -	Waterville.
F. E. Brown, - - - -	Waterville.
Simon S. Brown, - - -	Waterville.
Lewis A. Burleigh, - - -	Augusta.
Leroy T. Carleton, - - -	Winthrop.
Leonard D. Carver,* - -	Augusta.
F. W. Clair, - - - -	Waterville.
Frank L. Dutton, - - -	Augusta.
Harvey D. Eaton, - - -	Waterville.
Frank G. Farrington, - -	Augusta.
Geo. W. Field, - - -	Oakland.
W. H. Fisher, - - -	Augusta.
Dana P. Foster, - - -	Waterville.

*Deceased.

H. E. Foster, - - -	Winthrop.
A. M. Goddard, - - -	Augusta.
Wm. T. Haines, - - -	Waterville.
Herbert M. Heath, - -	Augusta.
Geo. W. Heselton, - - -	Gardiner.
Guy A. Hildreth, - - -	Gardiner.
Melvin S. Holway, - -	Augusta.
C. F. Johnson, - - -	Waterville.
Treby Johnson, - - -	Augusta.
Charles W. Jones, - - .	Augusta.
Samuel W. Lane, - - -	Augusta.
Thomas Leigh, - - -	Augusta.
Fremont J. C. Little, - -	Augusta.
Thomas J. Lynch, - - -	Augusta.
Benedict F. Maher, - -	Augusta.
W. L. McFadden, - - -	Augusta.
Arthur L. Perry, - - -	Gardiner.
Warren C. Philbrook, - -	Waterville.
F. K. Shaw, - - - -	Waterville.
G. T. Stevens, - - -	Augusta.
Asbury C. Stilphen, - -	Gardiner.
Lendall Titcomb, - - -	Augusta.
Henry S. Webster, - - -	Gardiner.
Joseph Williamson, - -	Augusta.

Knox County.

Alex A. Beaton. - - -	Rockland.
William T. Cobb, - - -	Rockland.
Edw. K. Gould, - - -	Rockland.
Frank H. Ingraham, - -	Rockland.
Arthur S. Littlefield, - -	Rockland.

Charles E. Littlefield, - -	Rockland.
J. H. Montgomery, - - -	Camden.
Jos. E. Moore, - - -	Thomaston.
David N. Mortland, - -	Rockland.
James E. Rhodes, 2d., - -	Rockland.
Reuel Robinson, - - -	Camden.
L. M. Staples, - - -	Washington.
Frederick S. Walls, - -	Vinal Haven.

Lincoln County.

Ozro D. Castner, - - -	Waldoboro.
Everet Farrington, - -	Waldoboro.
John M. Glidden Jr., - -	Newcastle.
Emerson Hilton, - - -	Wiscasset.
Wm. H. Hilton, - - -	Damariscotta.

Oxford County.

George D. Bisbee, - - -	Rumford Falls.
P. C. Fickett, - - - -	West Paris.
Seth W. Fife, - - -	Fryeburg.
A. E. Herrick, - - -	Bethel.
Alfred S. Kimball, - - -	Norway.
Charles A. Mendall, - -	Canton.
Ralph T. Parker, - - -	Rumford Falls.
John P. Swasey, - - -	Canton.
George A. Wilson, - -	South Paris.
J. S. Wright, - - -	South Paris.

Penobscot County.

B. C. Additon, - - -	Bangor.
Frederick H. Appleton, -	Bangor.

Charles A. Bailey, - -	Bangor.
Victor Brett, - - - -	Bangor.
James H. Burgess, - -	Bangor.
Hugh R. Chaplin, - - -	Bangor.
W. C. Clark, - - - -	Lincoln.
Milton S. Clifford, - - -	Bangor.
Hugo Clark, - - -	Bangor.
J. Willis Crosby, - - -	Dexter.
Charles J. Dunn, - - -	Orono.
Bertram L. Fletcher, - -	Bangor.
P. H. Gillin, - - - -	Bangor.
Joseph F. Gould, - - -	Old Town.
Charles Hamlin, - - -	Bangor.
Henry P. Haynes, - - -	East Corinth.
Mathew Laughlin, - - -	Bangor.
Forrest J. Martin, - - -	Bangor.
John R. Mason, - - -	Bangor.
Alanson J. Merrill, - -	Bangor.
Henry L. Mitchell, - -	Bangor.
John Nelson, - - -	Bangor.
F. H. Parkhurst, - - -	Bangor.
H. H. Patten, - - - -	Bangor.
Wm. B. Pierce, - - -	Bangor.
T. H. B. Pierce, - - -	Dexter.
J. T. Plummer, - - -	Dexter.
W. H. Powell, - - -	Old Town.
Allen E. Rogers, - - -	Orono.
Erastus C. Ryder, - - -	Bangor.
James M. Sanborn, - -	Newport.
Clarence Scott, - - -	Old Town.
George T. Sewall, - - -	Old Town.
Bertram L. Smith, - - -	Patten.
Ruel Smith, - - - -	Bangor.

Louis C. Stearns, Jr., - -	Bangor.
Thos. W. Vose, - - -	Bangor.
Peregrine White, - - -	Bangor.
F. J. Whiting, - - -	Old Town.
Franklin A. Wilson, - -	Bangor.
Charles F. Woodard, - -	Bangor.

Piscataquis County.

Calvin W. Brown, - - -	Dover.
M. L. Durgin, - - -	Milo.
Frank E. Guernsey, - -	Dover.
Henry Hudson, - - -	Guilford.
James H. Hudson, - - -	Guilford.
Willis E. Parsons, . - -	Foxcroft.
Alfred R. Peaks, - - -	Foxcroft.
Joseph B. Peaks, - - -	Dover.
John F. Sprague, - - -	Monson.

Sagadahoc County.

Arthur J. Dutton, - - -	Bath.
Sanford L. Fogg, - - -	Bath.
Wm. T. Hall, - - -	Richmond.
Wm. T. Hall. Jr., - - -	Bath.
George E. Hughes, - -	Bath.
Charles D. Newell, - - -	Richmond.
Harold M. Sewall, - - -	Bath.
Frank E. Southard,* - -	Bath.
Franklin P. Sprague, - -	Bath.
Frank L. Staples, - - -	Bath.
Joseph M. Trott, - - -	Bath.

*Deceased.

Somerset County.

Turner Buswell, - - -	Solon.
George M. Chapman, - -	Fairfield.
Abel Davis, - - - -	Pittsfield.
Bernard Gibbs, - - -	Madison.
Forrest Goodwin, - - -	Skowhegan.
George W. Gower, - - -	Skowhegan.
Daniel Lewis, - - - -	Skowhegan.
John W. Manson, - - -	Pittsfield.
E. N. Merrill, - - - -	Skowhegan.
Augustine Simmons, - -	No. Anson.
C. O. Small, - - - -	Madison.
Daniel Steward, - - -	No. Anson.
L. L. Walton, - - -	Skowhegan.
George G. Weeks, - - -	Fairfield.

Waldo County.

Ellery Bowden, - - -	Winterport.
Fred W. Brown, - - -	Belfast.
R. F. Dunton. - - - -	Belfast.
George E. Johnson, - -	Belfast.
Arthur Ritchie, - - -	Liberty.
Wm. P. Thompson, - -	Belfast.

Washington County.

James M. Beckett. - - -	Calais.
F. I. Campbell, - - -	Cherryfield.
George A. Curran, - - -	Calais.
Clement B. Donworth, - -	Machias.
George R. Gardner, - -	Calais.

H. H. Gray, - - - -	Millbridge.
F. B. Livingstone, - - -	Calais.
J. H. McFaul, - - -	Eastport.
I. G. McLarren, - - -	Eastport.
B. B. Murray, - - -	Calais.
L. H. Newcomb, - - -	Eastport.
B. Rogers, - - - -	Pembroke.

York County.

Fred J. Allen, - - -	Sanford.
John B. Donovan, - - -	Alfred.
Walter H. Downs, - - -	So. Berwick.
George A Emery, . - -	Saco.
Geo. D. Emery, - - -	E. Lebanon.
Willis T. Emmons, - - -	Saco.
Hampden Fairfield, - - -	Saco.
George A. Goodwin, - -	Springvale.
John M. Goodwin, - - -	Biddeford.
F. W. Guptill,* - - -	Saco.
Frank M. Higgins, - - -	Limerick.
Nathaniel Hobbs, - - -	No. Berwick.
Luther R. Moore, - - -	Saco.
W. P. Perkins, . - -	Cornish.
Charles H. Prescott, - -	Biddeford.
Moses A. Safford, - - -	Kittery.
John C. Stewart, - - -	York Village.
Edwin Stone, - - - -	Biddeford.

*Deceased.

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INE STATE BA

ASSOCIATION

Report

OF THE

MAINE STATE BAR ASSOCIATION

FOR

1908 AND 1909

VOLUME 16

With the Proceedings of the Annual Meeting held at Augusta, Maine, January 14, 1909.

AUGUSTA:
PRESS OF CHARLES E. NASH & SON.
1909

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OFFICE OF SECRETARY OF
MAINE STATE BAR ASSOCIATION.

AUGUSTA, MAINE, January 6, 1909.

DEAR SIR:—The annual meeting of the Maine State Bar Association will be held in the Senate Chamber, Augusta, Maine, on Thursday, January 14, 1909, at 2.30 o'clock P. M. The order of business will be as follows:

1. Reports of Secretary and Treasurer.
2. Reports of Committees.
3. Address by Honorable Albert E. Pillsbury of Boston, Mass.
4. Election of new members.
5. Election of Officers.
6. To see what action the Association will take with reference to the Canons of Professional Ethics, adopted by the American Bar Association August 27, 1908.
7. To see what action the Association will take with reference to establishing a system of Superior Courts.
8. To see what action the Association will take with reference to legislation relating to expert testimony.
9. To transact any other business that may properly come before the Association.

The meeting will conclude with a dinner at the Augusta House at 8 o'clock P. M.

Please notify the Secretary at once by enclosed postal whether you will be present at the dinner. This is necessary in order to complete the arrangements.

Per order,

NORMAN L. BASSETT, Secretary.

Maine State Bar Association

ANNUAL MEETING

AUGUSTA, MAINE, January 14, 1909.

In accordance with the call for the meeting, which was duly sent to each member of the Association, as provided in the By-laws, the annual meeting of the Maine State Bar Association was held in the Senate Chamber, State House, on Thursday, January 14th, 1909, at 2.30 P. M.

The meeting was called to order by the Vice-President of the Association, Hon. L. B. Deasy, of Bar Harbor.

THE VICE-PRESIDENT: Brethren of the Bar: Since the last meeting of this Association its President, Orville Dewey Baker, in the plentitude of his splendid powers, entered into his final rest. In assuming, as Vice-President, to take the place which he would have filled so gracefully if present, I deem it proper to ask you to pause for one moment in reverent respect of his memory.

I do not purpose to speak in his eulogy; another voice far more competent will do that. I merely pause before beginning the business of the day that we may here, silently, lovingly, lay upon the bier of the great lawyer, who was also our brother and friend, fair flowers from memory's garden.

The Secretary's report was then submitted as follows:

REPORT OF SECRETARY

To the Maine State Bar Association:

Judge Cornish, who served as your Secretary continuously from the re-organization of the Association in 1891, after having been re-elected at your annual meeting in February, 1907, resigned by reason of his appointment as Justice of the Supreme Court. Your present Secretary was appointed April 9, 1907, by the Executive Committee to fill the vacancy. He wishes to express his appreciation of the honor conferred by this appointment.

Judge Cornish always had and still has the deepest interest in our Association and was a large contributor to its present excellent condition.

The proceedings of the meeting held February, 1907, were reported stenographically and printed in full and copies have been sent to each member of the Association. This method of recording the proceedings has been generally approved by the members and the Secretary has observed that a greater interest in the work of the Association has been created by it.

Arrangements have been made for a complete report of the proceedings of this meeting. The expense of printing and circulating such reports is greater than that of the reports of former years, but the fuller reports are so valuable that it seems best to follow this method. It may require the necessity of larger dues, but that matter may be left for the future.

At the meeting of 1907 the experiment of devoting both the afternoon and evening sessions to the discussion of subjects was tried. The experiment proved to be a success, but as the Association had not dined together for four years it was thought best for this year to have the evening session a dinner. The programs of our future meetings may be varied by the two methods. It is earnestly hoped that annual meetings of the Association may be held hereafter. We could profitably imitate in this respect the Bar Associations of sister states and other associations in our own state. A crown is laid up for those of our future officers who can bring this about.

The Secretary has exchanged reports with the Bar Associations in other states and has deposited those received in the State Library.

He has also had considerable correspondence with the Secretary of the American Bar Association, and particularly with reference to the report of the committee on professional ethics and the canons of ethics adopted by that Association. Your Secretary has been informed that copies of the report and canons would be sent for distribution among the members of this Association. All of these copies have not been sent, but at the request of your Secretary a sufficient number were forwarded last week for distribution among the members present at this meeting.

From various members of your Committee on Legal History have been obtained the names of those members of the Maine Bar who have deceased since January 1, 1907. They are:

ANDROSCOGGIN

John B. Cotton,	January 6, 1909
Clarence V. Emerson,	June 11, 1908
Judge A. K. P. Knowlton,	September, 16, 1908
Frederick W. Lunt,	November 18, 1908

AROOSTOOK

Ransom Norton,	March 24, 1907
Llewellyn Powers,	July 28, 1908

CUMBERLAND

Samuel L. Carleton,	April 12, 1908
George W. Verrill,	July 21, 1908

KENNEBEC

A. G. Andrews,	December 29, 1907
Orville D. Baker,	August 16, 1908
S. S. Brown,	September 3, 1908
Lendall Titcomb,	April 23, 1908

KNOX

Gordon M. Hicks,	April 3, 1908

LINCOLN

Ozro D. Castner,	May 15, 1908

OXFORD

Edwin H. Gleason,	October 3, 1907

PENOBSCOT

Albert W. Paine,	December 3, 1907
Thomas W. Vose,	March 3, 1907
Albert W. Weatherbee,	February 22, 1904

YORK

Moses A. Drew,	June 27, 1907
Luther T. Maron,	August 26, 1907
Harold S. Fairfield,	October 21, 1907
James M. Stone,	December 15, 1907
Wilbur F. Lunt,	May 28, 1908

Among these are the Honorable Orville Dewey Baker who was elected President of our Association in 1905 and re-elected in 1907. By his passing there was extinguished a legal light, at that time undimmed, of remarkable brilliancy, of great penetrating power and illuminating so brightly each part of the field of law toward which its rays were turned that one could walk with safer steps therein. We recall today that eloquent tribute to the Bar with which at our last meeting he closed what proved to be his last address to our Association.

NORMAN L. BASSETT,

Secretary.

The Treasurer's report was submitted as follows:

REPORT OF TREASURER

NORMAN L. BASSETT, Treasurer, in account with Maine State Bar Association, 1907-8.

DR.

1907			
Feb. 13,	To cash balance from preceding year,		$163 98
	To dues collected by L. C. Cornish, Treas.		
Feb. 13,	To dues 1905-6,	$ 1 00	
to	" 1906-7,	1 00	
Mar. 21,	" 1907-8,	7 00	
			$ 9 00
	To dues collected by Norman L. Bassett, Treas.		
April 9,	To arrears, dues 1903,	$ 1 00	
to	" " 1904,	1 00	
Dec. 30,	" " 1905,	34 00	
	" " 1906,	31 00	
		$ 67 00	
	To dues 1907,	187 00	
	" 1908,	1 00	
			$255 00
			$427 98

CR.

Date		Item		
Feb.	19,	By paid Treasurer's book, (by L. C. C.),		$ 60
Mar.	26,	By paid (by L. C. C.), A. H. Whitman, stenographer, for attendance on sessions and copy notes,		38 75
July	2,	By paid 2,000 envelopes,		3 30
July	13,	By paid stamps: 375 six-cent, for reports,	$ 22 50	
		By paid stamps: 375 two-cent,	7 50	
				$30 00
July	20,	By paid Kennebec Journals for copies of obituaries,		2 00
July	26,	By paid Secretary and Treasurer,		100 00
Aug.	20,	By paid H. C. Thayer plate of Judge Wiswell's signature for report,		1 25
Sept.	5,	By paid C. E. Nash & Son, printing report,	$200 00	
Sept.	20,	By paid C. E. Nash & Son, printing 2,000 envelopes,	3 00	
Nov.	5,	By paid C. E. Nash & Son, printing due notices and remittance blanks,	4 90	
				$207 90
				$383 80

1908			
Jan. 1,	By cash on deposit to balance,		$ 44 18
			$427 98

DR.

1908			
Jan. 1,	To cash balance from preceding year,		$ 44 18
	To dues collected to wit:		
Jan. 1,	To arrears, dues 1905,	$12 00	
to	" " 1906,	13 00	
Dec. 31,	" " 1907,	28 00	
		$ 53 00	
	" " 1908,	183 00	
			$236 00
			$280 18

CR.

May 28,	By paid 1,000 postals,	$10 00	
May 30,	By paid 400 two-cent stamps,	8 00	
June 5,	By paid Secretary and Treasurer,	100 00	
July 8,	By paid C. E. Nash postals and due notices,	5 25	
			$123 25
1909			
Jan. 1,	By cash on deposit in Granite Nat'l Bank,		$156 93
			$280 18

MR. C. F. LIBBY of Portland: I think the report of the Treasurer has to be audited under the rules of the Association, and I think that work has already been done, and I would make the motion that Hon. O. F. Fellows be appointed auditor of that report.

The motion was agreed to.

MR. FELLOWS: Mr. President, I have audietd the report of the Treasurer and signed it.

AUGUSTA, MAINE, January 14, 1909.

I hereby certify that I have examined the accounts of Norman L. Bassett, Treasurer of the Maine State Bar Association, for the years ending January 1, 1908, and January 1, 1909, and find said accounts to be correct and properly vouched for.

O. F. FELLOWS,

Auditing Committee.

THE VICE-PRESIDENT: The Auditor reports that he has attended to his duty and finds the accounts correct.

MR. LIBBY: I now move that both reports, of the Secretary and of the Treasurer, be accepted.

The motion was agreed to.

REPORTS OF COMMITTEES

THE VICE-PRESIDENT: The Committee on Membership report the following list of names for membership:

ANDROSCOGGIN

Charles B. Carter,	Auburn
W. H. Judkins,	Lewiston
Augustus P. Norton,	Lewiston

AROOSTOOK

Roland E. Clark,	Houlton

CUMBERLAND

Frank H. Marshall,	Portland

KENNEBEC

George K. Bassett,	Augusta

OXFORD

L. W. Blanchard,	Rumford Falls

PENOBSCOT

John Wilson,	Bangor

PISCATAQUIS

Francis C. Peaks,	Dover

SOMERSET

Fred F. Lawrence,	Skowhegan
Edward F. Merrill,	Skowhegan

WASHINGTON

Frederick Bogue	East Machias

YORK

James O. Bradbury,	Saco
Benjamin F. Cleaves,	Biddeford
Walter J. Gilpatrick,	Biddeford

The question being put it was voted that the foregoing be admitted as members of the Association on the usual terms.

THE VICE-PRESIDENT: The Committee on Law Reform.

MR. C. F. LIBBY: Mr. President, in the address of our late President certain matters were discussed by him. He thought that remedial legislation was needed, and those matters were referred by the Association to the Committee on Legal Reform. They have been considered to this extent — the Committee is widely scattered, they have not been able to hold a meeting and discuss these matters and arrive at a conclusion, but the Chairman tried his hand at drafting bills on the several subjects referred to in the address and has sent them to the next member of the Committee with the request that he make any amendments or changes that occurred to him as wise, and then that should be forwarded to the next member of the Committee and finally that the Committee should get together and consider the whole matter. Brother Morrill has told me this afternoon that they

have been sent by him to Brother Ryder, and I suppose they are on their way to the other members of the Committee. So we can only report partial progress and ask permission for the Committee to be continued for further consideration of the matters.

THE VICE-PRESIDENT: The Committee on Legal History.

THE SECRETARY: Those reports are made by the various members. I have received the names and have incorporated them into my Secretary's report, and shall confer with them further. I have received from Brother Reade of Androscoggin a complete report as far as his county is concerned.

THE VICE-PRESIDENT: I have the honor now to introduce to you as the Speaker of the afternoon Hon. Albert E. Pillsbury, ex-attorney general of Massachusetts. (Applause).

ADDRESS OF HON. ALBERT E. PILLSBURY

Brethren of the Association:

Your invitation to address this meeting was accepted at short notice, and I have taken, on the spur of the moment, a topic suggested in the pages of a leading Review. The current number of this publication contains an elaborate article designed to show that the "so-called" Fifteenth Amendment, as it is there styled, never became and is not a part of the Constitution of the United States, or of any force or effect in the law of the land. As the reasons assigned for this remarkable proposition lead irresistibly to the inference that the Thirteenth Amendment and parts of the Fourteenth are equally infirm, this conclusion is promptly accepted, and these also are declared a nullity; though the learned writer, apparently indisposed to do too much violence at once to the institutions of his country, is benevolently willing to allow them to continue in operation for the present, or at least until the Fifteenth Amendment can be finally and completely effaced. His way of doing this would be "to frame proceedings, preferably though not necessarily in one of the five states which refused to accept this so-called Fifteenth Amendment," to bring the question before the Supreme Court of the United States and have the Amendment adjudged invalid.

Except for the source of this production, it would at once occur to a reader possessed of any knowledge

of constitutional law, or the political history of the country, that a serious answer to it would be hardly less absurd than the thing itself. In connection with the publication the author is described as having recently retired from the bench of a highly respectable Federal court. There may be some readers who would naturally suppose that an ex-judge of such a tribunal might be expected to speak with somé degree of authority upon a question of Federal constitutional law. Accordingly, when such a personage deliberately asserts the invalidity of so important a part of the Federal Constitution as the "war amendments" are understood to be, and when an influential periodical gives public currency to that opinion, a decent regard for the importance of the subject will justify some inquiry into the degree of faith and credit due to this ex-judicial deliverance.

As naturally would be expected, an appropriate foundation is laid for that part of the argument which is supposed to be of a legal character, by a few temperate observations upon the political aspects of the "so-called" Fifteenth Amendment. It is said to have been "conceived in iniquity and begotten to subserve grossly partisan purposes;" it has "greatly injured our Aryan race and seriously threatened the stability of our Aryan institutions" and has been "the source and cause of untold calamity to our country;" it is "a fanatical tenet," "read into the organic law so far as it was possible for the fanatics to read it," and "a perpetual source of irritation and annoyance to all true lovers of their country;" and finally, "it should be wholly expunged from the

statute-book by proper judicial construction." As any political discussion would be out of place here, all this will be passed with the single remark that it is warranted in historical truth to about the same extent that the legal argument is founded in principle or authority.

The legal ground upon which the invalidity of the Fifteenth Amendment is asserted is so remarkable, to put it mildly, that it should be quoted in its own terms. Disclaiming any purpose to attack the amendment as not properly ratified by three-fourths of the states, the writer says:

"The question which we would raise is of far graver import in its constitutional aspect. It is, that this so-called Fifteenth Amendment is not an *amendment*, but an *addition*, to the Constitution; and that, while *amendments* to the Constitution may be enacted by vote of three-fourths of the states, in accordance with the provisions for amendment in Article V of the Constitution itself, yet an *addition* to the Constitution cannot be made, except by unanimous consent of all the states, which this Fifteenth Amendment never received."

This is, indeed, important if true. No judicial authority is cited for the distinction between an "addition" and an "amendment" to the Constitution, as there is no such authority; indeed, it is declared that the question "is here raised for the first time," as undoubtedly it is. A short specimen of the argument by which the world is invited to accept this discovery may be put in evidence.

"*Addition* is something entirely new, and *not*

germane to the original instrument; *amendment* is alteration or improvement of that which in some form is already there. The distinction between *addition* and *amendment* is fundamental, and is very clear to every one. No one will claim that they mean the same thing; and it would, therefore, be unnecessary to expend effort to show the difference between them."

If this could be taken for granted, the writer's conclusion might follow, but if this theory is sound it is remarkable that it has not appeared at an earlier stage of our history. For a dozen years before the adoption of the Federal Constitution the original states were engaged in the making, and to some extent in the amending, of constitutions. For a century now past the ablest legal minds of the country, in Congress, at the bar and on the bench, have been dealing with the validity and effect of constitutional amendments. They have been the subject of much judicial controversy in several states, where the question usually has been of the validity of amendments of a constitution containing in itself no provision for amendment, or of amendments made in a manner different from that prescribed by the Constitution. It is familiar knowledge that the question of amending the Federal Constitution arose even before its adoption, and was perhaps the subject of more discussion, while its ratification was pending before the states, than the original instrument itself. No sooner was it adopted than the process of amendment began. Every one of the fifteen amendments has been the subject of the most

searching examination, in the courts, in Congress and in the country. In every lawyer's library there are volumes full of discussion and construction of the three war amendments, almost every word of which has been subjected to a microscopic scrutiny that has taxed the resources of the whole bar and judiciary of the United States. They were regarded as hostile by a substantial number of the states, the operation of two of them, at least, has been actively resisted, their validity has been challenged upon other grounds, and legal ingenuity has especially been racked for the last twenty years to discover any means of evading the Fifteenth Amendment, or any plausible or possible theory upon which it could be avoided. But never before, in all the history of judicial and forensic controversy over constitutional amendment, nor in all the commentators and text-writers, from the Federalist through Kent and Story down to our own time, has the principle been revealed that the Constitution of the United States is to be construed by the rules which govern a town meeting, or that an "addition" to a constitution is not an "amendment" of it and is of no force or effect unless tried by a parliamentary manual and found to be "germane." This discovery has been left to purely original genius.

There are so many answers to this proposition that it is difficult to know which to put forward and which to pass over. The answer which lies nearest at hand is short and simple, and it ought to be enough. Article V of the Constitution provides for amendment of it. What is "amendment?" The standard diction-

aries appear to be agreed in defining it, in legal terminology, as a change or alteration, by way either of correction, excision or addition. There is every reason to believe that this has been the universally accepted meaning of that word, until it occurred to an ingenious mind that the Fifteenth Amendment is not an "amendment" because it is an "addition" to the Constitution.

If the argument permits of serious examination, it must be made in the light of Article V, in which, after provision for amendment of the Constitution on the initiative of Congress or of two-thirds of the states, subject to ratification by three-fourths, it is further "*provided*, that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate."

The express limitations thus imposed upon the provision for amendment are of controlling significance in determining its scope or extent. The slavery interests insisted upon putting the slave-trade beyond reach of the amending power until 1808, with some further permanent protection for slavery in respect of taxation. The smaller states insisted upon securing themselves against the greater by perpetual equality of power in the upper house of Congress. These concessions were made, and these limitations were expressly laid upon the provision for amendment. No other limitations were laid upon it, and under the familiar rule, *expressio unius est exclusio*

alterius, no others can be implied. The framers of the Constitution annexed to the amending article, in so many words, the only limitations which they designed it to have. It must have been known to the trained legal minds in the convention that by imposing these specific restraints, they were by clear implication excluding any other restraints upon it. There is not a word or hint of doubt in Article V itself or in the debates of the convention that, saving the express limitations, the article was intended and taken to provide for any change or alteration in the Constitution which the people, as the source of all political power, should see fit to make. We shall see later that this was clearly understood.

And further, the limitations of Article V are not limitations upon the *power* of the people to amend the Constitution. Article V is neither the source nor the measure of that power. The American principle of the sovereignty of the people, and their right to institute, abolish or alter their government "in such form as to them shall seem most likely to effect their safety and happiness," asserted in the opening words of the Declaration of Independence and reasserted in some if not all of the state constitutions, was not only accepted by the framers of the Federal Constitution, but they regarded it as so fundamental that it did not need further expression, and any direct expression of it was omitted from the original Constitution. This omission, and others like it, led to the call for an express declaration of rights, which was added by the first ten amendments. It is now judicially settled, as was reasonably evident from the

beginning since it is declared in so many words, that the Constitution was the act of "the people of the United States" as one people, undivided by state lines; and by the Tenth Amendment, indeed by necessary implication without it, the whole power of alteration of the Federal government is reserved to the people, acting through their constitutional agencies. Article V is not a reservation of the power of amendment, a power inherent in the people, which did not need to be reserved. It is a provision of certain methods for the orderly and peaceable exercise of the power, and it is nothing more.

The Federal Constitution is not to be interpreted by the rules which govern the acts of private parties, nor by the parliamentary code of a legislative body. The construction of the instrument of government must be as broad as its scope and operation are far-reaching. The assertion of this principle began in the earliest times, with Chief Justice Marshall, who called attention to the sparing use of limiting terms in the Constitution and pronounced a solemn admonition against a narrow or restrictive construction of it. "We must never forget," he said. "that it is a *constitution* we are expounding." This rule of construction long ago passed beyond possibility of question. As declared by the court within our own time, " A constitution, establishing a frame of government, declaring fundamental principles, and creating a national sovereignty, and intended to endure for ages and to be adapted to the various crises of human affairs, is not to be interpreted with the strictness of a private contract."

If the Federal charter could be construed by the rules of a debating society, and if the question whether the Fifteenth Amendment is "germane" to the Constitution could seriously be discussed, it would not be difficult to show that it is germane. If the Fourteenth Amendment is valid as part of the Constitution, the Fifteenth is clearly germane, as it is directly in line with and supplementary to the first and second clauses of the Fourteenth. But as the validity of the Fourteenth Amendment also is challenged to meet the argument upon its own ground it is necessary to go a step farther.

The question whether an amendment is germane to the instrument amended is not a question of the relation of words, but of purposes. It cannot be settled by dissecting phraseology in order to find a particular verbal peg upon which the amendment may be hung. Least of all can this process be applied to amendment of a constitution. An amendment is germane if it falls within the general scope and purpose of the instrument amended. If this relation exists, it is enough. What are the purposes of the Federal Constitution? They appear, in language so felicitous that it has become classic, in the preamble, where the people of the United States have declared that their Constitution is established "to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity." Unless the amendment is so foreign to all these purposes that it can bear no legitimate relation to either of them, it is germane to the Constitution

And, if this question can be raised, it cannot be determined by any tribunal of less authority than the people themselves, in whom alone, acting through their representatives, is vested the power to amend the Constitution, to determine the occasion for amending it, and the character and scope of the amendment. Otherwise, it would result that the people of the United States have authorized a bench of judges to circumscribe and cut down the political power, of the whole of which the people are the source and depositary. It cannot be conceived that a court would entertain such a question as this longer than to dismiss it from judicial cognizance.

The only claim of anything in the nature of authority for the alleged distinction between an "amendment" which can be and an "addition" which cannot be made to the Constitution, rests upon the title under which the earliest amendments were submitted to the people by the 1st Congress in 1789. It is said that they were "proposed for adoption under the title of 'additions and amendments' to the Constitution," so that "evidently it was recognized that there was a sharp distinction between *additions* and *amendments*, and that the one did not include the other."

If any argument is to be drawn from this title, it is a simple process to show that it is directly the other way. The joint resolution of Congress submitted twelve Articles together "as Amendments to the Constitution of the United States," under the title or heading of "Articles in addition to and Amendment of the Constitution of the United States." The sub-

mission of them all in the body of the resolution "as Amendments to the Constitution" is enough to dispose of the argument, but apart from this, how does it appear from the title that the framers of the amendments, who were to some extent the same persons who framed the Constitution, had in their minds, or intended to make or suggest, any legal distinction between an "addition" to the Constitution and an "amendment" of it? All of the twelve articles being indiscriminately declared to be "in addition to and Amendment of the Constitution," if it was thereby intended to distinguish between some of them as "additions" and others as "amendments," where is the distinction to be found, or how is it to be known? Which of the articles are "additions" and which are "amendments?" The entitling clause, so far from affording any means of making such a distinction, is plainly inconsistent with it. The marshalling of all the articles under a common style, without any designation of any one of them as belonging to the one class instead of the other, shows conclusively that the words "addition" and "amendment" were not used by way of distinction, but as synonymous and interchangeable terms. The only meaning which the heading will bear, whether regarded as the ordinary expression of common men, or critically, in its precise syntactical significance, is that all of the articles are additions to, and all of them are amendments of, the Constitution, without distinction among them; in short, that they are all alike additions to the Constitution by way of amendment, or amendments by way of addition.

There is yet another difficulty with the argument sought to be drawn from this title. If it proves anything it proves too much. If the authors of the amendments actually did, as is claimed, recognize the distinction between "addition" and "amendment," and meant by "addition" to describe something different from "amendment," it follows that they actually regarded some of the articles, though we do not know which, as being "additions" to the Constitution, and not "amendments" of it. So it appears that these men, some of whom had helped to frame the Constitution, immediately proceeded to submit "additions" to that instrument, which "additions" the people forthwith ratified and adopted. In other words, the framers of the Constitution, and their constituents, alike regarded "additions" to the Constitution as being within the provision for amendment, if any such distinction ever occurred to them. The truth undoubtedly is that it never did occur to them; but those who assert the contrary may reasonably be required to accept the results of their own reasoning.

There is no reason to suppose that the title prefixed to the Amendments was drawn with any particular care, or was designed to have any particular significance. Its form may easily be accounted for. When the people learned that the Constitution submitted by the convention contained no such declaration or bill of rights as they had been accustomed to see in the constitutions of the states, they called for the addition to it of such a declaration. This expression ran through the debates in the state

conventions and elsewhere while the ratification was pending. The Constitution was ratified with a practically universal understanding that such an addition should be made. It was made, under the title which naturally grew out of the discussion, "Articles in addition to and Amendment of the Constitution;" and it may be noticed in passing that it was capitalized in the original exactly as it is here reproduced. Grammatically and historically its meaning, and its significance so far as it has any, are directly the contrary of that which is sought to be ascribed to it. And further, these "additions" to the Constitution were expressly declared to be submitted "pursuant to the fifth Article of the Original Constitution," and were submitted in precise conformity to the method and procedure prescribed by that Article; which shows plainly enough that these "additions" to the Constitution were unquestioningly regarded, not merely as within the political power of the people, but as directly within the scope and purpose of the provision for amendment in Article V.

If it appears absurd to pursue a question of constitutional construction into such holes and corners, the absurdity is in meeting the argument upon its own level. There are more conclusive answers than this to the question whether the fathers of the Constitution believed that an addition to it is beyond the scope of the provision for amendment, and one of them, at least, is directly invited by the article under review. It puts the query whether, if Hamilton or Madison had been asked to explain in the Federalist the scope of Article V and if anything could be added

to the Constitution which three-fourths of the states might think proper, and had answered that inquiry in the affirmative, there would have been any chance of the adoption of the Constitution?

Evidently this question was put without examination of the Federalist. The answer is there. The provision for amendment of the Constitution is not much noticed in that work, but there is enough to show that neither Hamilton nor Madison overlooked the difference between enlarging and abridging the Federal powers by future amendment, and that both regarded amendment as extending alike in each direction.

In Number XLIX,* Madison says: "As the people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived; it seems strictly consonant to the republican theory, to recur to the same original authority, not only whenever it may be necessary to *enlarge*, diminish or new-model the powers of government, but also whenever any one of the departments may commit encroachments on the chartered authorities of the others." Here is the testimony of Madison that enlargement of the Federal powers was, in his view, within the scope of amendment, not only as permissible but as liable to be necessary.

Number LXXXV, the last word of the Federalist, from the pen of Hamilton, was addressed especially

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* Sometimes numbered XLVIII.

to the people of New York, where the demand was much pressed for alteration of the original draft of the Constitution before ratification, by addition of a declaration of rights. In answering this demand, Hamilton points out that it will be less difficult to obtain amendments of the Constitution after its adoption than to recast the work of the convention before adoption; and says "nor, however difficult it may be supposed to unite two-thirds or three-fourths of the state legislatures in amendments which may affect local interests, can there be any room to apprehend any such difficulty in a union on points which are merely relative to the general liberty or security of the people. We may safely rely on the disposition of the state legislatures to erect barriers against the encroachments of the national authority."

Not only was the possibility, to Hamilton not unwelcome, of "encroachments of the national authority" plainly before him, but in this passage he was meeting an argument based upon it, as we know from the history of the discussion. If he understood or believed that the Constitution permitted no extension of the Federal field of power by future amendment, this would have been the appropriate and conclusive answer, and it would have been Hamilton's answer. He believed no such thing. Knowing and admitting that such extension by amendment was a possibility of the future, he answers that the state legislatures are sufficient barriers against the encroachments of Federal power.

The Federalist essays were in the hands of every statesman and publicist of the time. They were then

and have ever since been accepted as the highest authority on the subject except the debates in the convention itself. The debates had not then been given to the world. The views of Hamilton and Madison as expounded in the Federalist were the views of the Constitution under which it was ratified by the people. But we do not need to know what Hamilton or Madison thought of this question. We know what the people thought of it, and what they did about it. Even before the Constitution was adopted, they demanded the addition to it of a declaration of rights. No sooner was it adopted than the Congress hastened to propose and the people to accept and ratify the desired additions. The question whether additions can be made to the Constitution was substantially settled in 1791, by the adoption of the first ten amendments.

It is without force to say that these additions were all in restraint of Federal power. If the Constitution can be altered, it can be altered in either direction. There is nothing in it, or in the contemporaneous discussion of it, or in any subsequent discussion or judicial exposition of it, for one hundred and twenty years, to warrant the assertion that the Federal powers cannot be extended by addition if the people see fit to extend them. In the controversy provoked by the three war amendments at the time of their adoption, every reason which legal or political ingenuity could conceive was arrayed against them, but this reason never was thought of. It might have been plausibly, if not correctly, urged that these amendments were, as the article under review

regards them, not "germane" to the original Constitution. But this question was not raised. There is no such question within the bounds of reason or of accepted constitutional construction. The war amendments have always been judicially recognized, and sometimes expressly declared, to be additions to the Constitution, in derogation of rights theretofore held by the states, as plainly they are. But, as the court says, "A state cannot disregard the limitations which the Federal Constitution has applied to her power. Her rights do not reach to that extent. . . . . Every addition of power to the general government involves a corresponding diminution of the governmental powers of the states." The Fifteenth Amendment has on several occasions been judicially enforced, and never, in the numerous cases where it is considered, has there been intimated the remotest doubt of its validity.

Neither is it to the purpose to say that these ten amendments were ratified by all the states, or that "*addition* requires *unanimous* consent of the states while *amendment* may be made and become effective by a vote of three-fourths of the states." The assent of three states, Massachusetts, Connecticut and Georgia, though they finally assented, does not appear and has never appeared in the Federal archives. It was not needed. The eleven states which first ratified the amendments were three-fourths, and were enough, and the amendments were treated as duly adopted upon the assent of the eleven, without waiting for the action of the others. It could have made the adoption no more effective.

Where in the Constitution does any ground appear for distinction between assent of three-fourths and unanimous assent? Nowhere. No such thing can be read out of it, or into it. It contains, either expressly or by implication, no call for unanimous concurrence of the states in any alteration of the Constitution, or in any event whatever. No method is expressly provided, even by unanimous consent, for abrogation of the provisions of Article V that slavery is to have certain protection, and that the states shall be equal in the Senate. Doubtless they could have been annulled by concurrence of all the states, but this plainly would be an "amendment" of the Constitution, and not an "addition" to it. In other words, the only case calling for unanimous consent which can arise out of any constitutional provision is not the case of addition, but of excision.

It is enough to say that the Constitution does not contemplate the unanimous consent of the states to anything, nor any contingency requiring such consent. The division or merging of a state, or its deprivation of equal suffrage in the Senate, calls only for the consent of the state affected. The assertion that nothing can be added to the Constitution without unanimous consent of the states has no more foundation than the new-found distinction between "addition" and "amendment." The Constitution stands upon the rule of the majority, and every state which comes into the Federal union is bound by the action of the constitutional majority, exactly as the individual citizen is bound by it in the ordinary operation of government. This was declared by

Hamilton in the convention, and it must have been understood then as it has been universally understood ever since.

It is said that if additions can be made to the Constitution, it will be possible to overthrow the Federal system and establish a centralized despotism. This does not necessarily follow, but this very possibility was urged against Article V in the convention which framed the Constitution, and that Article was adopted in the face of it. If it were a question of possibilities, we might ask: Would it be possible to believe that this acute and enlightened body of men, engaged as they were in creating a Federal government of real powers for want of which the Confederation had proved impotent and worthless, intended to put the people in such a position that they could never again enlarge its scope, to any extent or under any conditions, for all time to come? That they could cut down the Federal structure but never could add a single stone to build it up? That they could not even restore a power once taken away? That they should be in the attitude of abdicating forever a substantial part of the political power of which they were the depositary? And that all this was done without disclosing or indicating by a single word that it was being done? If this is true, the judgment which the world has pronounced upon the convention of 1787 will have to be reversed.

We now know that it is not true. The debates in the Federal convention are the final and conclusive evidence. The accepted canon of construction being

that a constitution means what it was understood and intended to mean in its inception, we have only to turn to the record preserved by Madison to settle the question at once and forever.

The discussions which led up to Article V, while comparatively brief, disclose enough for the purpose. Some members saw no necessity of any provision for amendment. To them, Madison and Randolph replied that the plan was sure to be found defective, as the Confederation had been, and it was better to provide for amendment in a constitutional way than trust to chance or violence. The first reported draft provided for amendment on application to Congress by two-thirds of the states. Gerry objected that this would enable two-thirds of the states to make innovations which might altogether subvert the states. Hamilton did not object to this; it was no more objectionable to subject the whole people of the United States to the majority voice than the people of a state; but he opposed the draft as confining the initiative power to the states, which he thought should be extended also to the Congress. Sherman moved an amendment extending the initiative to Congress, but calling for the consent of all the states, which was opposed and three-fourths was substituted. The draft finally reported by the Committee on Style provided for amendment on the initiative of Congress by vote of two-thirds of each branch, or on application of two-thirds of the states, to be ratified by three-fourths. Mason objected to this as practically leaving the whole power in Congress, so that no

"proper" amendment could ever be obtained if the government should become oppressive. To meet this, Gouverneur Morris and Gerry proposed to require the Congress to call a convention whenever two-thirds of the states should apply, which was agreed to. Sherman, who had already tried to make any amendment depend on the consent of all the states, now opposed any provision for amendment, as it might be fatal to particular states, by abolishing them altogether or depriving them of an equal voice in the Senate; and he moved to strike out the whole article. This was voted down, and the smaller states being reassured by the proviso, moved by Morris, that no state should be deprived of its equal voice in the Senate, and the slavery interests having already been placated, the article passed into its final form.

It thus appears that the danger of additions to the Federal power, even so great as possibly to subvert the states, was directly brought before the convention by several of its most influential members. Their apprehensions were disregarded. The view of the Federalists was that the amending power of the states was liable to be so exercised as to unduly cut down the Federal government, while the Democrats maintained that the amending power of Congress was liable to be exercised to the detriment or even the overthrow of the states, and there were some extremists who thought that this result might follow from any provision for amendment, in any form. Nevertheless, the convention, with all these hazards in view, determined to give both Congress and the states the power to initiate amendments. It was

done deliberately, upon the open and uncontradicted assumption that the amending Article was all-embracing and was subject to no limitations except those which were expressly imposed upon it, and it was done in the face of a jealousy of Federal power so great that it came near defeating the Constitution. By no word or sign is there any indication of a purpose to exclude future additions to the powers of the Federal government from the scope of amendment, or of any understanding that they are excluded.

It is not to be inferred from what I have said that I recognize any necessity for proving, especially to a body of lawyers, that the three war amendments of the Federal Constitution are as valid and effective as any part of it. If there is in any perturbed mind a dream of annulling the Fifteenth Amendment by judicial decree, on the ground that it is an "addition" to and not an "amendment" of the Constitution, the dream will never be realized, and the tilt against the amendment which has occasioned these remarks might safely be left to the penalty invited by its own extravagance. None the less, this sort of hawking at the Constitution is unwholesome, and especially so is the suggestion that even its form can be changed and its text cut down by a majority of a bench of judges. These eminent dignitaries have the power, which they occasionally exercise and of which they cannot be deprived, of altering the Constitution by construction, and this is quite enough. Constitutional amendment by political innovation, sanctioned by

acquiescence of the people, is unavoidable and has already become fastened upon us. Numerous examples of this could be cited, and especially within the past decade radical and perilous changes in our constitutional system have been effected, *sub silentio*, by this process. There should be no juggling with the organic law, by this or any other method, nor any change in it to which the people have not consented in advance. While it stands, it is to be obeyed and if necessary enforced, and at present there appears to be more occasion for enforcement than for amendment. If it is not to stand, let the people amend it openly and in the orderly way. It is not to be undermined by devious approaches, and any attempt at that process presents a peculiarly appropriate subject of attention by the members of the American bar, on whom devolves no higher duty than to guard the integrity and maintain the authority of the laws.

THE VICE-PRESIDENT: For Mr. Pillsbury's interesting, luminous and instructive address the thanks of this Association are due, and I assume without further action to speak for all in extending to him the appreciation and thanks of the Maine State Bar Association.

THE VICE-PRESIDENT: Election of officers.

On motion of Mr. Fellows, Messrs. Fellows of Bucksport, Newell of Lewiston, and Lee of Augusta, were appointed a committee to nominate officers for the ensuing year.

THE VICE-PRESIDENT: While waiting for the report of the committee we will take up the next item, which is to see what action the Association will take with reference to the canons of professional ethics adopted by the American Association, August 22d, 1908.

MR. LIBBY: I have been requested to present some considerations bearing upon this matter of these canons of professional ethics which have been adopted by the American Bar Association, in the hope that the State Bar Association may also adopt them so there shall be a common understanding on these important questions affecting the interests and prosperity of the Bar and public alike. This question of formulating a body of canons of ethics has been before the American Bar Association since 1905, the committee made up of distinguished lawyers, including, as you will see on the third page of this printed pamphlet, five Presidents and ex-Presidents of the American Bar Association, a Justice of the Supreme Court in Washington, one of the circuit judges in Alabama, formerly a governor of that state, and several lawyers of national reputation such as General Thomas H. Hubbard, one of the distinguished lights of the New York Bar, James G. Jenkins of Wisconsin, Francis Lynde Stetson of New York, and others of similar rank and character. After very careful consideration and exchange of views with representatives of the Bar of the several states they have formulated finally a body of canons of ethics which they believe will promote the highest interests not only of our profession but of the public.

I am not going to weary you by too prolonged a discussion of this matter but perhaps a reference to some things in the final report of this committee, which was made in Seattle in August last, may indicate to you the care and wisdom which has attended the formulation of these canons. Already, before the action of the American Bar Association was consummated in the adoption of this report, ten states had adopted practically these same canons, starting with Alabama; and the author of that compilation was a judge from that state who is a member from Alabama of this committee. The basis of these canons is undoubtedly Sharswood's Essays, one of the classics of the profession; and all the members of this Association and the members of the American Bar Association have undoubtedly received, during the year preceding the present, a copy or republication of that valuable work. In this final report which was made in Seattle, where these canons were adopted unanimously with the exception of a slight change relating to contingent fees in the effort to make more clear the meaning of the committee, they have referred to a previous report where the advisability or practicability of an adoption of some canons of ethics was discussed at length. They have added as a preamble to these canons extracts from three legal authorities. The first is George Sharswood, who says:

"There is certainly, without any exception, no profession in which so many temptations beset the path to swerve from the line of strict integrity, in

which so many delicate and difficult questions of duty are continually arising. There are pitfalls and mantraps at every step, and the mere youth, at the very outset of his career, needs often the prudence and self-denial as well as the moral courage, which belong commonly to riper years. High moral principle is the only safe guide, the only torch to light his way amidst darkness and obstruction."

And then Chief Justice Ryan of Pennsylvania:

"Craft is the vice, not the spirit, of the profession. Trick is professional prostitution. Falsehood is professional apostasy. The strength of a lawyer is in thorough knowledge of legal truth, in thorough devotion to legal right. Truth and integrity can do more in the profession than the subtlest and williest devices. The power of integrity is the rule; the power of fraud is the exception. Emulation and zeal lead lawyers astray; but the general law of the profession is duty, not success. In it, as elsewhere, in human life, the judgment of success is but the verdict of little minds. Professional duty, faithfully and well performed, is the lawyer's glory. This is equally true of the Bench and of the Bar."

And they close this preamble with the following words from Abraham Lincoln:

"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser — in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of

being a good man. Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles, whereupon to stir up strife and put money in his pocket? A moral tone ought to be enforced in the profession which would drive such men out of it."

Now I am not going to weary you by reading the thirty-two canons which are recommended which deal with various relations of the profession to the courts and to their clients, but I think that any lawyer who reads these carefully cannot but feel that the profession will be lifted up to a higher standard of usefulness by their adoption. The fact that such a body of men have devoted their time for three years to their consideration, that the largest and most influential body of lawyers in this country have given these canons their unqualified approbation, is a sufficient reason, it seems to me, why each State Bar Association in turn should adopt them as the common expression of the ideals of the profession in each state. That is what the American Bar Association asks of this Association. They have generously provided from their own funds printed copies for distribution among all the lawyers of this country. The present number is not the quota assigned to Maine, but there has been some little delay in receiving the full number. It is intended that every lawyer in this State shall be able to have a printed copy of these pamphlets.

There is one other matter which they deem of importance, and that is the question of the oath which should be administered to attorneys on their admission to the Bar. In the main it follows the oath which we use in this State but it is more elaborate, pointing directly at certain subjects which are rather impliedly covered by the form of oath now in use. Allow me to read this oath which has already been adopted in Alabama, California, Georgia, Idaho, Indiana, Iowa, Minnesota, Mississippi, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington and Wisconsin. It says also in this note, "The oath administered on admission to the Bar in all the other states requires the observance of the highest moral principle in the practice of the profession, but the duties of the lawyer are not as specifically defined by the law as in the states named." Before reading the oath I would say that the adoption of this oath is intended to be made obligatory by our statute the same as the adoption of the oath now in use. The body of canons of ethics is intended to be adopted by the Law Association as the expression of the standards which they recognize as obligatory upon the members of the profession in the practice of law; so that this report would look to two kinds of action — first, its adoption by the Maine State Bar Association as the canon of ethics of this Asssociation, second, to make uniform throughout all the states the statutory obligation so far as the form of oath is concerned. I have had occasion before this Association to discuss somewhat the importance of uniform laws on general subjects

affecting the public and the profession at large. I concur in the expression of the committee of the American Bar Association in the importance of having the oath of the profession uniform in the several States of the Union.

Now permit me to read the form of that oath:

"I DO SOLEMNLY SWEAR:

"I will support the Constitution of the United States and the Constitution of the State of————

"I will maintain the respect due to Courts of Justice and judicial officers;

"I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

"I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law.

"I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;

"I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

"I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. SO HELP ME GOD."

This oath, you see, covers certain general principles which underlie these canons of ethics, the latter dealing in more detail with the relations existing between the members of the Bar and the Court and the members of the Bar and their clients and the public.

Now let me read some of the headings of these canons so you can see their scope. The first is:

1. The duty of the lawyer to the courts.
2. The selection of judges — dealing with the responsibilities which rest upon the Bar in the wise selection of the men who are to declare the law upon the Bench.
3. Attempts to exert personal influence on the Court.
4. When counsel for an indigent prisoner.
5. The defense or prosecution of those accused of crime.
6. Adverse influences and conflicting interests.
7. Professional colleagues and conflicts of opinion.
8. Advising upon the merits of a client's cause.
9. Negotiations with opposite party.
10. Acquiring interest in litigation.
11. Dealing with trust property.
12. Fixing the amount of the fee; and I don't know but that the wisdom perhaps of this committee in dealing with this matter may be as well shown by reading that number 12:

"In fixing fees, lawyers should avoid charges which overestimate their advice and services, as well as those which undervalue them. A client's ability to pay cannot justify a charge in excess of the value

of the service, though his poverty may require a less charge, or even none at all. The reasonable requests of brother lawyers, and of their widows and orphans without ample means, should receive special and kindy consideration.

"In determining the amount of the fee, it is proper to consider: (1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other business while employed in the particular case or antagonisms with other clients; (3) the customary charges of the Bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency or the certainty of the compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service.

"In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade."

Number 13 relates to contingent fees; and there, as I said, a slight change was made from the report of the committee as made at Seattle merely to render more plain its meaning. It is very brief: "Contin-

gent fees lead to many abuses, and where sanctioned by law should be under the supervision of the Court." The change has been made as follows: "Contingent fees, when sanctioned by law, should be under the supervision of the Court, in order that clients may be protected from unjust charges," the addition showing the object which the canon has in view. This was agreed to and the canon changed in that form.

14. Suing a client for a fee.

15. How far a lawyer may go in supporting a client's cause.

16. Restraining clients from improprieties.

17. Ill feeling and personalities between advocates.

18. Treatment of witnesses and litigants.

19. Appearance of lawyer as witness for his client.

20. Newspaper discussion of pending litigation.

21. Punctuality and expedition.

22. Candor and fairness.

23. Attitude towards jury.

24. Right of lawyer to control the incidents of the trial.

25. Taking technical advantage of opposite counsel; agreements with him.

26. Professional advocacy other than before courts.

27. Advertising, direct or indirect. And as a further illustration of the care and consideration that has been given to that matter, with your consent I will read it:

"The most worthy and effective advertisement possible, even for a young lawyer, and especially

with his brother lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity to trust. This cannot be forced, but must be the outcome of character and conduct. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not *per se* improper. But solicitation of business by circulars or advertisements, or by personal communications or interviews, not warranted by personal relations, is unprofessional. It is equally unprofessional to procure business by indirection through touters of any kind, whether allied real estate firms or trust companies advertising to secure the drawing of deeds or wills or offering retainers in exchange for executorships or trusteeships to be influenced by the lawyer. Indirect advertisement for business by furnishing or inspiring newspaper comments concerning causes in which the lawyer has been or is engaged, or concerning the manner of their conduct, the magnitude of the interests involved, the importance of the lawyer's positions, and all other like self-laudation, defy the traditions and lower the tone of our high calling, and are intolerable."

28. Stirring up litigation, directly or through agents.

29. Upholding the honor of the profession.

30. Justifiable and unjustifiable litigation.

31. Responsibility for litigation.

32. The lawyer's duty in its last analysis. Permit me to read that:

"No client, corporate or individual, however

powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render, any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen."

In a matter of this importance I hesitate somewhat to ask this Association at this time, especially if any desire to further investigate the substance or the form of these canons — I say I hesitate to ask the Association to take action. It may be that the wiser course would be for the appointment of a committee or a reference to some standing committee of these canons, and to await their report. Under the cir-

cumstances I think I myself would perhaps make no motion on the subject.

THE VICE-PRESIDENT: The Chair awaits the pleasure of the Association.

MR. STAPLES of Washington: I have been very much interested in the reading of the canons and I think, as a member, that this Association would be willing to adopt them at this time; and I move that they be adopted by this Association.

MR. DYER of Portland: May I inquire if the adoption of the canons imposes any obligation on the part of the Association to change the terse and admirable oath now in use in this State for the oath as it appears in the report?

MR. LIBBY: No, that is a separate matter.

MR. DYER: I merely wished to make it clear. I second the motion.

The motion being put, it was agreed to.

MR. LIBBY: Now I would be glad for some expression of opinion from this Association as to the wisdom of complying with the request of the American Bar Association to make uniform the form of oath in the future. As to the value of uniformity, and the value of an oath not perhaps so general as ours which shall direct specific attention to certain duties incumbent upon the lawyer on his admission

to the Bar, I am somewhat impressed personally with the importance of it. This oath starts, I think, 'way back in the sixteenth century, as shown in one of these papers, known as the oath of the Geneva Conference — I think that is the basis of it. It is the form of oath, as I read to you, already adopted in ten of the states; the form of the oath recommended after careful consideration by the American Bar Association.

Of course no action which we could take here will effect any change in the oath, but should this Association think it wise to adopt a uniform oath for the lawyers of this country, of course they would express an opinion in favor of that action which would have to be presented in concrete form to the Legislature. I think the matter is of too much importance, I think it comes to us with the authority of too great names, to be disposed of without consideration and careful consideration, and I should be very glad to know what the opinion and sense of this Association is on this matter. That the solidarity of the profession should be represented in the solemn oath a lawyer takes on admission to the Bar, independent of locality, is, I think, an important matter for our profession at large, because we are all growing to appreciate that we are only parts of one greater Commonwealth, and that the duty of the professional adviser or officer of the Court is the same whether he lives in Maine or in the distant state of Washington. I think that anything which goes to recognize in legislation that solidarity, that community of interests, that equality so far as the profession is

concerned, is a matter of considerable importance; and for that reason I would be very glad to know the opinion of the Association upon the advisability of adopting that form of oath, so far as any action of this Association can adopt it.

MR. CLAIR of Waterville: I move that the matter of the oath recommended by the American Bar Association and contained in these pamphlets be referred to the committee on law reform.

MR. DYER: What is the effect of that? Is the decision of the committee on law reform conclusive on the Association in presenting it to the Legislature?

MR. LIBBY: Oh, no.

THE VICE-PRESIDENT: The Chair's understanding is that the committee would only have authority to consider the matter and report back to the Association.

The motion being put, that the matter be referred to the committee on law reform, it was agreed to.

MR. FELLOWS: Mr. Chairman, the committee appointed to make nominations for officers for the ensuing year, report as follows: For President, L. B. Deasy of Bar Harbor; for Vice-Presidents, George C. Wing of Auburn, F. H. Appleton of Bangor and C. F. Johnson of Waterville; for Secretary and Treasurer, Norman L. Bassett of Augusta; and the other officers the same as last year.

MR. LIBBY: Mr. Chairman, I move that the Secretary be authorized to cast the vote of the Association for the officers as reported.

The motion being put, it was agreed to.

THE SECRETARY: Mr. Chairman, the Secretary has attended to the duty assigned him and has cast the ballot of the Association for the officers named in the committee's report.

MR. HEATH of Augusta: Mr. Chairman, before proceeding further with the regular business, I would like the privilege of bringing up a matter, personal to all of you, personal to myself. With the election of your new board, the term for which our late President was elected is ended, and it was suggested to me that the officers of the Association thought that this would be a fitting time for us to interrupt the business of the Association and spread upon our records some simple and appropriate memorial, I was asked by the officers of the Association to draft it, presumably because of my long and intimate personal acquaintance with him — I can imagine no other reason. I was not asked to say anything prefatory nor shall I attempt in any way to add to it. I imagine that I was not asked to do that for the reason that it is entirely unnecessary.

Mr. Baker occupied a unique position at the Bar of this State. You once elected him President of this Association in 1895. That he should have been again elected two years ago was a most signal honor,

for to be elected President of this Association is one of the professional honors of one's life. To be called to that place twice, not by the courtesy of a customary re-election but after an interval of eleven or twelve years, was a decided honor to come to him. Every member of this Association knows that he deserved it. Whatever difference of opinion there may have been as to his relative standing at the Bar in 1895, I think I offend the sensibilities of no lawyer when I say that two years ago and until his death, he was by common consent the acknowledged leader of the Bar of Maine. Men may win distinction in politics with all the means that are used to gain such distinction, but whoever with his own sword wins the high place of the leadership of the Bar of Maine must be a man indeed. The duty that I have to perform here, I think, Mr. President, is best performed by asking the members of the Association to join with me in a rising vote in the adoption of this memorial, and if the language of it meets your approval, as I hope it will, to spread upon our records this simple memorial:

The Maine State Bar Association sincerely and deeply regrets the untimely death of its late President, the Honorable Orville Dewey Baker.

He was a lawyer of rare ability, an orator of convincing power, a polished gentleman, and, best of all, a friend whom it was a delight to know and meet. His record is written in the annals of the Courts his presence adorned. Nothing we can say can add to his well-won fame. He will long be remembered by his many friends, the members of this Association.

If that meets your approval I would move that the memorial be adopted by a rising vote, and that the memorial be spread upon our records.

THE PRESIDENT: It is moved that the memorial which has been read be adopted by this Association by a rising vote. Those who favor the adoption of this memorial and the spreading of it on the records of this Association will manifest it by rising.

(The members arose).

THE PRESIDENT: The vote is adopted unanimously.

THE VICE-PRESIDENT: To see what action the Association will take with reference to establishing a system of Superior Courts. If no action is to be taken with reference to this matter the Chair will pass to the next topic.

MR. HEATH: I hope we won't let that pass without some action of some kind. There is a deep feeling on the part of the judges that with the great increase of the business of the State — and I do not mean by that simply the law business of the State, but the vast increase of business in this State and the continual growth of its interests of all kinds — the time has come when the State ought to do something to relieve the Supreme Court. Whether that can best be done by a Superior. Court system, or how it ought to be done I do not propose to discuss, but this

is one of the means that has been suggested. It has been talked of in different meetings of the Association and committees have been appointed. My recollection is that a committee was appointed two years ago and was expected to report at this meeting upon the matter. In any event, it does not seem as if we ought to let it go by here without doing something to see if we cannot devise some means to enable the courts to get their work done early. We all know the interminable delay there is in waiting for decisions from the Law Court; and we all of us understand, without my taking up your time, the reason for it. The judges are worked not so much in their *nisi prius* terms, but in the vast amount of equity work that they have to do. In this county of course we have no cause to complain. It seems to be a part of the Constitution of the State now that no man is eligible to be judge of the courts unless he lives in Kennebec County, so we are fairly well served; but my friend Libby will say, with only two judges in Cumberland County and the enormous amount of equity work they have there that some new thing, perhaps not this, but some new thing ought to be devised to help out such counties as Cumberland and Androscoggin and Penobscot and perhaps some others. We have this advantage this year — we have usually met, I think, along in February, when the work of the Legislature was so well advanced and there were so many things on their hands that we never had much of a hearing on any new things that have come up in the Association. We are meeting now at the very beginning practically of the

session, and if a committee could be appointed with fairly full powers in this matter — after some discussion we might indicate the limits of their powers — something might be done without putting this matter over for two years. I have always thought — I don't want to appear to be interfering too much in the work of the Association — I have always thought that if something could be done in the way of enlarging the Superior Court system and giving to them more powers than the Superior Courts have now, giving them some of the equity powers of the Court, that a medium might be worked out along those lines in the way of relieving the Supreme Court. I make these suggestions just simply to start a discussion, that is all.

THE PRESIDENT: The Chair will inform the Association that at the meeting held two years ago in the middle of February, a committee was appointed on motion of Mr. Heath, to confer with the judiciary committee in reference to this matter of a Superior Court system. That committee consisted of H. W. Oakes, Harry R. Virgin and E. C. Ryder.

MR. MONTGOMERY of Camden: Mr. Chairman, I only wish to say I notice that in the present Legislature there has been put in a bill affecting Superior Courts in several of the counties, probably all that they thought it was necessary. Perhaps it would be well to investigate before taking much action. Now this meeting here I see represents the State as a State and the different counties in very meager numbers

of the lawyers. In the appointment of judges the coast towns other than Ellsworth have received very little consideration. Perhaps if those appointments were distributed a little more with relation to the different counties there would be less stagnation as to opinions and matters of that kind. It is a great question; but I think the Legislature will struggle with the present bill and perhaps something may come of it.

MR. FELLOWS: I have a communication which I will pass to the Secretary, from the Chief Justice, in reference to this particular matter.

THE SECRETARY: It is a letter dated January 13th, which I will read:

BANGOR, MAINE, January 13, 1909.

Hon. Oscar F. Fellows,

My Dear Mr. Fellows:

Recurring to our conversation upon the lamentable delays in the decision of cases by the Law Court, I comply with your request that I put in writing some of the opinions I then expressed. I express, however, only my own personal views. I do not assume to speak in the least degree for any other member of the Court.

The delays of which you complained are lamentable, but they should not be attributed to any lack of industry on the part of the Justices. They are now inevitable under the present system, and I fear will increase rather than diminish.

Formerly we had an intermediate court for *nisi*

prius and similar work, leaving the Supreme Court ample time for its law work. When these intermediate courts were abolished and the *nisi prius*, equity, and other work were imposed upon the Supreme Court Justices in addition to the law work, the new system was perhaps sufficient for the then conditions. Since then, however, conditions have greatly changed; equity suits and equity chamber business have enormously increased. Our corporation laws inducing so many incorporations in this State have added largely to the labors of the Court. The great expansion of our industries, the pulp and paper mills, the cotton and woolen mills, water companies, street railways, electric lighting and power companies, impose upon the Court increased litigation most important in kind and amount. New and difficult and extremely important questions are continually arising.

To delay justice is often to deny justice, especially to the poor. Early as well as correct decision is often of vital importance to public and private interests. It is lamentably true, however, that many important questions needing early solution remain undecided months, and sometimes for more than a year after argument. This delay, however, is not owing to the indolence or incapacity of the members of the Law Court, but is owing to the insistence of the Bar and people that they shall do so much *nisi prius* and equity work. Take the late December Law Term for instance: It was an important term. Some of the cases involved important, new, and far-reaching questions of law requiring much research and reflection. In several there was need of early decision. Yet, instead of being allowed to apply themselves at once to the study of the cases, the Justices were obliged to separate to take up *nisi prius* and equity work, leaving their law cases practically unconsidered. It is impossible to consider

law cases while holding a *nisi prius* term. Further, the time between terms is much taken up with equity and other hearings.

While the work of the Law Court is not so harrassing and exhausting as that of the practicing lawyer, it is yet work requiring close concentrated and often protracted mental application, with consequent "brain fag" at times when no man can work. The Justices need not only time for study, but time for rest and recuperation.

Now (my dear Mr. Fellows), I am not complaining. I do not ask for anything. I am only justifying, insisting that the Justices are doing the best they can under the system. If the Bar and people are satisfied with the system and its results, we will cheerfully acquiesce and continue to do our best under it.

Sincerely yours,

LUCILIUS A. EMERY.

MR. LIBBY: Mr. Chairman, the question which is raised by this subject is an important one and the Association has struggled with it, as Brother Heath has said, in days that are gone. I remember the time since the reorganization of this Association in 1891, when the consideration of the establishment of a Law Court proper was considered, with independent judges to hold the *nisi prius* terms. All phases of that question were considered and this Association decided that it did not want an independent Law Court, that the system inherited from our English ancestors of having the law judges go out on the circuit and keep in touch with the Bar at the trial of causes and then assembling as a Law Court was on the whole preferable as avoiding a certain class of evils which grew out of having law judges alone.

Since that time I recognize that the changed conditions of practice have in certain counties made the labors of the Supreme Court judges more onerous; and for many years we have been trying to reach that difficulty by the establishment of independent Superior Courts, and the calendar of this Legislature will show that that question is coming up to be again considered by the judiciary committee as it was considered two years ago.

Now how wisely to deal with these questions taxes the wisdom of an Association like this. Take it in my own county, for instance. We have dealt with it there by the establishment 'way back in 1868, of a Superior Court which has concurrent jurisdiction in most matters, except equity and divorce, that come before the Supreme Court. The plan that was proposed last year did not meet at all with the concurrence of the largest Bar of the State in my county. It contemplated a Chief Justice and ambulatory Justices going about from county to county to hold those courts. The Cumberland Bar said, "No. It is not for us to say what you need, gentlemen, but we are opposed *in toto* to the interference with our Superior Court as it is now established." There are reasons why the Bar prefers to have its own local judge in its own local Court, and a fixed feature of that Court, and it is not willing to become a part of an ambulatory system by which judges from five counties, as I think it was provided, should in turn or subject to the appointment of the Chief Justice hold the terms in the several counties. Now it does seem to me that you will find that feeling

more strongly intensified the longer you have your Superior Courts, and that you can now meet the wants of each county where changed conditions have imposed labors that are too onerous on the existing judges by the establishment of a Superior Court; and the extent of the jurisdiction of that Court is a matter of wise discretion. I doubt if our Superior Court judge could handle equity matters with the amount of ordinary civil cases which are submitted to him and the great mass of criminal cases which we have in the County of Cumberland. It may be that in another county, perhaps your county here, you could add equity jurisdiction or you could throw divorce jurisdiction onto the Superior Court.

MR. MONTGOMERY: May I ask the gentleman a question? I would ask Brother Libby if perhaps leaving it to a committee of the several counties to formulate some plan for a Court for each would not be wise?

MR. LIBBY: If I get your idea, you mean for the counties that now want Superior Courts to act together?

MR. MONTGOMERY: Yes.

MR. LIBBY: If you include all, which would include the Superior Court of Cumberland County, I know you will meet with a strong protest from that county as to any disturbance of the jurisdiction and personality of that Court. Now, what it is wise for

you to do to relieve the needs of the profession in the other counties, I do not attempt to deal with at this time. I simply suggest that the special needs of each county may require special treatment, and that the question of the extent of jurisdiction you shall give to your Superior Court judge depends entirely upon the character of the practice and the amount of business of a special kind which may exist in that county. The difficulty at this time, at this annual meeting, of formulating a system which anybody on reflection would approve of, is very great, it seems to me; and it has always seemed to me that the erection of an independent system of Superior Courts with interchangeable judges, following the system of the Supreme Court, is not a wise solution of this difficult problem. Now you have got this matter, you have had it before the judiciary committee before, you have got it before your committee to-day on specific bills. It is well understood that the question of the needs of any particular locality cannot be decided with reference to the question of jurisdiction, and I think it would be unwise for this Association to undertake to formulate decisive views upon that question. I trust, therefore, that the matter will be left where it properly belongs, with the judiciary committee to consider what wisely can be done to meet an existing need, and that we shall not undertake to reorganize the judiciary of this State. I have wrestled with that problem with a committee of wise men, I think, before, and I know all the difference of opinion which exists as to the best way of dealing with it.

MR. NEWELL of Lewiston: Then you would not advocate a system of Superior Courts throughout the State with the same jurisdiction?

MR. LIBBY: No, I would not, for the reason that it is a subject for the county that needs it and with a jurisdiction fixed with the needs of that county; and I think it is the true way of dealing with this question.

MR. MONTGOMERY: Leaving it to the county?

MR. LIBBY: Leaving it to the county, and letting the Bar of that county indicate the extent of jurisdiction which they think is necessary to relieve the work of the Supreme Court.

MR. NEWELL: Mr. President, it seems to me that it would be an extraordinary procedure to have a system of Superior Courts and each Court in each different county with a different jurisdiction that depends upon the conditions in that particular county; because it rather occurs to me that a man with a practice that extended over several different counties would have a good deal of trouble in keeping tract of the jurisdiction of the different Superior Courts in which he might be called upon to practice law.

MR. HEATH: It would be about as bad as it would be for the man who tries to go fishing there.

MR. NEWELL: Just about.

MR. LIBBY: Mr. President, I move that the matter be laid on the table.

The motion being put, it was agreed to.

THE PRESIDENT: To see what action this Association will take with reference to legislation relating to expert testimony.

MR. LIBBY: If you will pardon me for talking so much perhaps I ought to say something about that matter. I think three years ago the Chief Justice made an address to this Association calling attention to the unsatisfactory condition of the law with reference to the use of expert testimony, having reference more particularly to medical testimony, but in his address taking in the whole subject. The Association approved of that address to the extent of asking the Chief Justice to draft a bill formulating his recommendation. That bill was prepared by him, introduced into the Legislature at the last session, narrowed down to the single point of medical testimony, eliminating some features of the bill, leaving counsel free to introduce further medical testimony if they were not satisfied with the expert evidence offered by the experts appointed by the Court, as a trial matter, but if it worked well and it aided in the administration of justice or in reaching the correct results it was felt that the bill could afterwards be enlarged. The judiciary committee

had a very large docket at the last session. It is possible that they gave the bill all the consideration it deserved although I could not help feeling that when the Chief Justice of the State was invited to deliver an address making specific recommendations looking to a reform in the law and was asked further to prepare a bill to carry out those recommendations, this Association of the Bar of this State was somewhat committed to the approval of those recommendations; and it is rather with reference to the courtesy which is due to the Chief Justice under these circumstances that led me to hope that the bill which I think practically received the approval of this Association may still further be a matter of interest and further study to see if those recommendations have not a good deal of weight. I do not like the idea that the first attempt of the Bench to co-operate with the Bar in legislation looking to the better administration of the law should be laid aside as final; and I therefore hope that that bill, if it was not referred to this Legislature, may be re-introduced for the purpose of giving the judiciary committee further opportunity to see whatever of wise law, of wise amendment, there may be contained in it; and if there is any action required by this Association it seems to me it would be simply the expression of the sentiment of the Association that in our judgment a further consideration of that bill should be had.

MR. PETERS of Ellsworth: Mr. President, I happen to have here a copy of a draft of a bill by

Mr. Chief Justice Emery embodying his idea, possibly modified somewhat by the discussion which arose two years ago, and possibly by further consideration on his part, and also drawn at the request of the Maine Medical Association, and possibly embodying some views presented by that Association, which, with the consent of the Chairman and members, I will read:

STATE OF MAINE.

In the year of our Lord one thousand nine hundred and nine.

An Act in relation to expert evidence.

Be it enacted by the Senate and House of Representatives in Legislature assembled as follows:

Sec. 1. When in any case in the Supreme Judicial Court or any Superior Court it appears that a question or questions have arisen or may arise giving occasion for the testimony of experts, the Court or any Justice thereof, after notice to the parties and a hearing, may appoint one or more disinterested and suitable experts to investigate the questions and prepare themselves to testify in relation thereto if called upon.

Sec. 2. Such expert or experts shall afford the parties reasonable opportunities to attend and witness their examinations of any person or thing, where such attendance would not defeat or endanger the purpose of the examination. They may be called as witnesses by either party, or by the Court, and when so called shall be subject to full examination and

cross-examination as other witnesses are. For their services, and for their attendance as witnesses, they shall be paid from the treasury of the county such reasonable sums as the Court may allow.

Sec. 3. This Act shall not be construed as limiting the right of the parties to call other expert witnesses as heretofore.

MR. LIBBY: That is confined to medical testimony, isn't it?

MR. PETERS: No, it does not appear to be so. This bill as drafted does not confine itself to any particular kinds of experts but is general and broad enough in its scope to include any experts in any field of knowledge. It will be perceived that it differs from the bill drafted by the Chief Justice two years ago in that it does not prevent the parties from calling any number of expert witnesses that they may desire. The bill of two years ago expressly gave the Court power to limit the number of experts that either side might call. It will also be noticed that in the bill of two years ago there was an additional clause with the idea of authorizing a commissioner so called to take a view of things outside of the court room and in a measure act as agent of the jury, and after taking the view to report back to the jury and the Court. That does not seem to me to be entirely germane to the main object sought to be obtained, and the Chief Justice in this draft has omitted that provision. In those two particulars it differs radically from the bill of two years ago.

It appears in the report of this Association two years ago that there was some slight discussion as to whether or not the expert or experts after being chosen should make a report of their conclusions; and the idea has occurred to me whether or not a possible change in this bill would be desirable authorizing a report of experts; I speak of that because it appears to me that this subject might go so far as to assist, by having these experts of the Court, in the settlement of suits. I think we are all agreed that the condition of affairs in regard to expert testimony is such as requires some remedy. It is not possible of course to remedy completely the condition; if we can palliate it to some extent we shall be doing well. At present the matter of hiring expert witnesses on both sides, lining them up as many as the parties can pay for, embarrasses the jury, disgusts the Court and discourages the parties; and it strikes me that if this scheme could be worked out in this way or some similar way it might tend to encourage the settlement of litigation. At any rate it would assist the poor litigant who is not able to hire a large number of high-priced experts who charge anywhere from twenty-five to two hundred and fifty dollars a day; with the assistance of an expert appointed by the Court, in the nature of a court surveyor so to speak, responsible only to the Court and the State and his conscience, not in any way under the control or in the employ of any side, this supposed litigant in narrow circumstances stands a better chance, to say nothing of clearing up the situation so far as the trial of the case is concerned, shortening it and lessening the expense.

These are briefly the differences between this bill and that of two years ago. The Chief Justice in a note at the bottom of this draft suggests that "The above is drafted at the request of the Maine Medical Association. I don't care how it is changed if its object can be attained." The main thing of course is to approve of the principle involved in this bill, and if it seems to the Association a good principle it is for us to see whether or not we can frame a law which will carry it out and which will to some extent remedy the existing evil.

MR. LIBBY: I think I can perhaps clear up the matter a little. A reference to the discussion at the last session of this Association, on pages 22 to 38 of the report, will show that the principles of the bill that the Association approved limited it, first, to medical testimony; second, introduced the feature that the Chief Justice now adopts, that the appointment of an official expert should not prevent parties from calling other experts; and omitting from the bill the appointment of what you term as an agent of the jury to see things and report. We practically recommended this amended bill, and as I remember it there was some committee appointed that appeared before the judiciary committee in behalf of the Association recommending this bill, and a long discussion ensued. The bill was shorn of its broad features. As I said it limited it to one class of experts and did not prevent counsel from exercising their own judgment as to whether other experts were needed. So I think you will find among the archives of the last

Legislature the amendments that were submitted on the part of the Association to the judiciary committee; and the difference between the bill you have now read from the Chief Justice and the bill that was recommended is its limitation, as I remember it, to medical testimony.

THE PRESIDENT: I understand, if this bill as read by Brother Peters, were confined to medical testimony, it would be in substantial accord with the bill as drafted two years ago?

MR. LIBBY: I think so; and my motion is that we resolve that it is the sense of the Association that the recommendation in the form of the bill of the Chief Justice in the matter of medical experts be further considered by the Legislature.

MR. MAHER of Augusta: I would like to ask the gentleman who introduced it what the abuses it is aimed to correct are? Multiplicity of witnesses and all that?

MR. PETERS: Multiplicity of medical experts and expense of medical experts and the difficulty of a jury in deciding between six medical experts, for instance, on a side. Those three I think are sufficient to warrant some attempt at correction.

MR. LIBBY: Allow me to make a further suggestion — that the object is to relieve the medical profession of the charge of partisanship. It has

been requested on the part of medical practitioners themselves, that if they could be given an independent official position it would add great weight to the value of their testimony and it might eliminate some of the evils of partisanship which are so prominent in this class of cases.

MR. MAHER: The answer to your answer, if I gauge it correctly, is that partisanship is a personal matter. I don't see that that is going to be cured by any legislation. The partisanship depends on the personel of the witnesses. If this bill is aimed to correct the evil of lining up a multiplicity of witnesses, as the gentleman put it as many witnesses as they can hire, if that is the object of the bill, then section three defeats that because any litigant who is not satisfied with the testimony of this expert is going to proceed under section three, "This Act shall not limit the right of parties to call other expert witnesses as heretofore." It seems to me if this is in the interests of the poor litigants that section could well be omitted, if that is the object. If, on the other hand, the object of the bill is to have some designated authority upon expert questions appointed by the Court whose say is final, I think the poor litigants will be satisfied with that.

MR. LIBBY: To make one further suggestion. The effort is to remove the medical expert appointed by the courts from the atmosphere of partisanship the same as you do when you appoint a judge to the Bench. You give him an independent official posi-

tion. There is a responsibility to the Court and to both parties and to the public alike. It has been requested by the medical profession that something of this kind be done; and it seems to me that the change would have a tendency to give greater impartiality, greater force and greater value to the opinion of medical experts. Now that is theory. Whether it works out in practice altogether remains to be seen.

MR. MONTGOMERY: The difficulties arising in this matter are very well suggested by the fact that the Chief Justice of the Court has changed so completely in two years in his views as to the nature of the remedy; and it seems to me to be a question, while it is still a matter of doubt, whether we can settle it very well.

MR. HEATH: It seems to me that with the small attendance there is here it is hardly prudent or fair to undertake to send this to the Legislature with any vote that might be construed as a recommendation of this bill or any other bill. I don't think it is treating the Legislature fairly or the rest of the Bar.

Now, as to Brother Libby's first suggestion that it is due to the Chief Justice that we should pass some vote that would seem to carry out his recommendation, I cannot quite agree with him about that. When we invite the Chief Justice or any member of the Court or any eminent lawyer to address us, there is not, I submit, any implied obligation on our part as a matter of courtesy that we must accept his

recommendation either in whole or in part. As to this particular bill, while academically it may seem sound, I believe in practice it would destroy itself. Take the medical profession. I know of one particular corporation in this State that has under retainer to-day the ablest medical men in this State. They pay them a large per diem. This provision is that men are to be appointed medical experts by the Court who are to be paid by the county. You can never get this county or any other county to stand the payment of the per diem that goes to those men that I have in mind to-day, and they will not do it. In the second place, if you could imagine that a county would to-day pay one-half the per diem that those men get, they are not going to abandon these rich retainers to accept employment as experts employed by the Court at half pay, so your line of selection for your Court experts is to drop down a grade in professional standing. So I believe the practical result of it would be that these able men, these high-priced men if you want to call them so, are going to stay right where they are, and you have got to select your Court experts from men who are not able to compete with them. Your new men go on the stand, and after they get there the bare fact that they are appointed by the Court is not going to make them any better reasoners than they would be without that law. They have got to put their brains against the best men in their profession who are regularly retained, who are stronger than they are, and who are so much better paid that they will never leave their present employment. I believe the

bill is self-destructive. If we did not have this practice that we have, if this were a new thing and you could take the entire medical profession without any previous entanglements of any kind and could start society all over again, this law is like a good many others, academically correct, if we could only build the world over again; but you have got to face conditions as they are. I believe it would destroy itself when you commenced to use it.

Just one more suggestion. I would like to ask Brother Libby if it isn't true to-day, so far as this problem of multiplicity of experts is concerned, that the whole question of the number of experts on the one side and the other is absolutely within the discretion of the presiding judge?

MR. LIBBY: Not practically; it is never exercised.

MR. HEATH: Is it not within their power?

MR. LIBBY: I suppose, as a mere repetition of evidence, it is.

MR. HEATH: I understand it goes back to the general powers of the Court to stop the introduction of cumulative evidence. I know that I have been told by judges a good many times that I must limit the number of my experts. I always assumed without examination of the question that they had the power to do it.

MR. LIBBY: They have, under that general power, but they never use it with us.

MR. HEATH: I believe in treating the Chief Justice with all due courtesy but I don't believe in our doing anything that would prevent action that might seem antagonistic to his views, I certainly think we are not called upon to pass any affirmative vote. Nor do I think it fair to the Chief Justice to adopt a negative vote. If the whole subject matter is here in the hands of Brother Peters, Brother Peters is a member of the Legislature, he is on a committee that that will have jurisdiction of it and the subject matter can very easily be brought to the attention of the committee, because under our ancient customs Brother Peters can offer the bill without being compelled to vote for it after it goes to the committee. The ideas of the Chief Justice would then receive a full and fair hearing; but I do not quite like the idea of this Association going on record even partially for it. I am reminded of what Brother Bisbee said at one time in a committee of the Legislature. I had some new-fangled thing that I wanted the committee to vote for. When I read it, George said, "I don't know. Herbert puts it kind of plausible, it seems to be right, but I don't like too many of these new things; I am a little afraid of them."

MR. LIBBY: I want to ask if, as you state, any corporation in this State practically retains the leading talent of the medical profession, don't you think it would help remedy that condition if the Court could give an independent status to some eminent member of the profession so that he would

be withdrawn from the influence of that retainer? Don't you think that that would be the true way to overcome this monopoly of medical talent by any corporation, to have the Court exercise the power to appoint officially men in that profession whom he knew to be eminent and capable and give them the independent official position which is necessary to protect a person from unconscious partisanship?

MR. HEATH: Mr. President, when I made that statement that there was one corporation in this State that had under retainer to-day the ablest medical talent in the State I supposed that every lawyer in Maine knew that to be the fact. It is a fact. I I think every attorney here must know it. You cannot overcome it with this bill because those men are not going to desert their present employment for a cheaper one — not while human nature remains the same.

MR. MONTGOMERY: In other words, you cannot compel them to take the appointment.

MR. HEATH: I submit, while the bill academically is sound, practically it is not a sound measure.

MR. LIBBY: From the statements made to me by eminent medical men I believe the most eminent members of that profession want to be relieved from the position of partisanship, and that they would hail with satisfaction a bill which would enable the Court to appoint them to stand impartially between the parties in a case.

MR. HEATH: If they are so extremely conscientious as that they would testify differently from what they do in court.

MR. STAPLES of Washington: Mr. President, I do not believe so important a matter as this, a bill that will revolutionize the practice in our courts if it becomes a law, ought to be acted upon at this time, with so few members of the Association present. I do not think we should put ourselves on record as favoring any such bill, with all due respect to the Chief Justice. If Brother Peters or any other man wants to go before the Legislature with a bill of that kind, let them go there, then we will thrash it out there; and I move now that this bill lie on the table.

MR. LIBBY: I hope that action will not be taken. I think it would be better that the matter be passed for further consideration or something of that kind. My motion was that this Association recommend further consideration of the matter by the Legislature.

MR. PETERS: The Association had already put itself on record, as I understood it, in adopting the principle of this bill at the last meeting. It is true there only a few members here now. It may not be proper or wise to urge this matter to a vote on a principle of this bill now presented, which is in a measure similar to the one as amended by the vote of the Association two years ago; and if the motion of Brother Staples, that the bill lie on the table, is lost, I shall move that we refer this to the committee on law reform.

MR. STAPLES: If Brother Peters will make that motion I will withdraw mine.

MR. LIBBY: I withdraw mine.

MR. PETERS: Mr. President, I move that this matter of the proposed bill be referred to the committee on law reform.

The motion being put, it was agreed to.

MR. HEATH: Mr. Heselton was called home and asked me to read the following resolution:

Whereas, the volumes of the Maine Reports now printed, from 88 to 103, have no digest which make them of ready reference to the public and to the profession and

Whereas, the Hon. A. R. Savage has prepared the manuscript which is available as a supplement index digest to that formerly edited by him, and the same can be secured for publication, now therefore be it

Resolved, that it is the sense of this Association that this supplemental index digest should be published by the State at the earliest possible date.

I offer that for Mr. Heselton.

The motion being put on the passage of the resolution, it was agreed to.

On motion of Mr. Clair of Waterville.

Adjourned.

Biographical Sketches of Deceased Members of the Maine Bar

ORVILLE DEWEY BAKER

Died at Small Point, Sunday evening, August 16, 1908, Hon. Orville Dewey Baker.

Mr. Baker was born in Augusta, December 23, 1847, and in the same house which he had occupied all his life. His father was Joseph Baker, a very distinguished lawyer and member of the Association. Mr. Baker graduated from Bowdoin College in the class of 1868, studied law with his father and completed his legal education at the Harvard Law School from which he graduated with high honors in 1872. The same year he was admitted to the bar of Kennebec County and began his long career of hard and successful work. In 1883 he was admitted to practice before the United States Supreme Court. In 1885 he became attorney general, serving two terms. During this time he conducted the prosecution of David L. Stain and Oliver Cromwell convicted of having murdered Cashier Barron of the Dexter Savings Bank — one of the most famous cases ever tried in Maine. He was

counsel in many other great cases, and of late years often appeared for water companies in appraisal proceedings, of which the most important was the case of the Portland Water companies which occupied several months in the spring of 1908. He was counsel for the Maine Central and Boston & Maine Railroads, Western Union Telegraph Company, American Ice Company, Edwards Manufacturing Company, Hallowell Granite Works, the estate of J. Manchester Haynes and in the extensive timber land litigations of the Coburn heirs.

Mr. Baker was unmarried. Among his surviving relatives are Mrs. E. C. Dudley of Augusta, Mrs. R. W. Dunn of Waterville, Mrs. Albert S. Rice of Rockland, Mrs. Alfred E. Buck of Atlanta, Ga., Mrs. Frank A. Ham of Hallowell, Sanford A. Baker of Chicago, Henry B. Lewis of China and sister now living in Lynn, Mass.

" As a lawyer Mr. Baker has left a name and reputation that comes to but few men in any state. He had the best of training. His mind was enriched by the ripe scholarship that came from his four well-spent years at Bowdoin. There he was a close student, his standing prophetic of his future ability. Travel and study in Europe broadened his mind early in youth. He fitted for the bar at Harvard Law School, showing even then a masterly grasp of the law as a philosophical science. He came to the bar in 1872 in partnership with his father, Joseph Baker, then the acknowledged leader of the Bar of Maine. The son grew rapidly, not because of his father's standing but from his own power. He early

became known as a trial lawyer. There he was at his best. His rise was rapid and in many respects remarkable. It is unnecessary to recount the many notable cases in which he appeared in this and other states. During the past twenty-five years there have been but few great cases in Maine in which he did not take part. Perhaps the famous Stain and Cromwell case will be the longest remembered. No man in Maine of the present generation excelled him. Leading lawyers have said he had no superiors in New England.

"In direct examination he built the story of the cause with the touch of a novelist. In cross-examination he had his greatest weapon. There his fertility of resource carried his mind along from point to point with a skill pleasing to all but his opponents. In advocacy he was aggressive, courageous, logical and, when the occasion required it, eloquent. But in the Law Court, in battling for new propositions of law it is no reflection upon his fellow-members of the Bar to say he had no equals. So great was his conception of legal principles, so accurate was his idea of their relations one with another, so finely analytical was the keenness of his logical mind, that in his hands the common law expanded with society and equity took on new shape. He did much for the science he so dearly loved.

"He was never a politician, with little or no ambition for public office. He served his state as attorney general and honored the office. Beyond that, he was content to follow his profession. Still, he was a close student of public affairs, strongly conservative and

as firm in his convictions upon public questions as he was aggressive in asserting them.

"He could well be called an orator, a much-abused term in modern times when all talkers are called orators. Graceful in manner, of attractive address, with a pleasing, well modulated voice, he brought to his work all the externals of true oratory. His diction was rich, at times a prose-poem. But word-painter as he was, he never forgot that the real work of an orator is to convince. The juries, judges, legislatures and audiences that have listened to him will all bear witness that he more often convinced than lost. He certainly was an orator, a true orator, of whom his city and his State have been and will be justly proud.

"He won his fame as a scholar, a lawyer, an advocate and an orator, partly by inborn genius, partly by opportunities vigorously grasped, but mainly by untiring industry. His capacity for concentration was a gift. Few men could so readily absorb a new and difficult problem as he. Often apparently whipped in a cause, he would reform his lines and come to the attack with a courage that snatched victory out of the jaws of defeat. When he worked he worked. He believed that work was the price of all success. The royal English that often entranced his hearers was not always born of a night, but was more often the harvest of years of study and of toil. Such men deserve the fame they leave. Orville D. Baker will go down in the history of this State as a man great in whatever he undertook in life because he deserved to be great. We know that after death

eulogy is apt to take on the garb of fulsomeness. But his rivals said of him living what we now say of him dead. They studied him to measure him. They had to study him to meet him. We but repeat the tributes often given him in the fulness of his strength, tributes from lawyers to lawyer, foes in the court-room, friends outside."

ANDROSCOGGIN COUNTY

JOHN B. COTTON

Hon. John B. Cotton, one of the most distinguished members of the Androscoggin Bar, died at Washington, D. C., where he had made his home since 1889, on Jan. 6, 1909. Mr. Cotton was born in Woodstock, Conn., Aug. 3, 1841. His parents soon after moved to Clinton, Mass., where they lived until he was 18, when they moved to Lewiston.

Mr. Cotton fitted for college at Lewiston Falls Academy and was graduated from Bowdoin College in the class of 1865. He read law in the office of Fessenden & Frye in Lewiston, and was admitted to the bar in September, 1866. Upon the death of Mr. Fessenden, in 1868, Mr. Cotton entered into partnership with Mr. Frye, now United States Senator, under the name of Frye & Cotton, and continued with this firm, and that of Frye, Cotton & White, which succeeded it later by the admission of Wallace H. White,

Esq., until 1889, this firm being the leading law firm of the county and one of the best known in Maine.

In 1889 Mr. Cotton was appointed Assistant Attorney General of the United States, and moved to Washington, where he resided until his death. Upon the expiration of his term he entered upon the practice of law in Washington, and until the day of his death was engaged in many of the most important cases before the various United States courts in that city.

One of the leading cases in which Mr. Cotton appeared, and one which brought him much fame, was that of the claim of the state of Massachusetts against the United States for expenses incurred in fitting out troops during the Civil War. Mr. Cotton recovered $1,600,000 for the state, and by the terms of his contract received a fee of $160,000, though the state resisted its payment for a time.

Another important case in which Mr. Cotton appeared was that of the famous Salvadorean claims which at one time threatened international complications, but which were settled by reference to a commission of which the Chief Justice of Canada was the chairman. Mr. Cotton was counsel for San Salvador.

During his residence in Lewiston and his practice at the Androscoggin Bar, Mr. Cotton took a foremost place for his ability, his profound knowledge of the law, his honesty and integrity as a man, and his many social and genial qualities both in his dealings with his fellow attorneys and as a citizen.

He served one term upon the school board of

Lewiston and one year in the common council of the city. He married Miss Amanda Lowell, daughter of the late Mark Lowell of Lewiston, and his wife with one daughter, Mrs. Ethel Cotton Carlisle, survive him.

CLARENCE V. EMERSON

Clarence V. Emerson of the Androscoggin Bar was born at Lowell, Mass., Oct. 22, 1849, and died at Lewision, June 11, 1908. He was educated at Yarmouth, North Anson and Hebron academies, and at Bates College, graduating from the latter institution in 1877.

After graduation he taught school for a time, and then began the study of law in the office of Hutchinson & Savage, and was admitted to the bar at Auburn in April, 1882.

He at once began the practice of his profession in Lewiston at first alone, and later with Edgar M. Briggs under the name of Emerson & Briggs. He was city solicitor of Lewiston in 1889, and was a member of the board of health of Lewiston in 1887 and for several years thereafter.

In 1890, upon the death of Preston S. Laughton he was appointed clerk of the Lewiston Municipal Court, and held that position until his death. As clerk he was known as one of the most careful and capable in Maine. He prepared nearly all the blanks used in his court, and they became known generally throughout the municipal courts of the State as

models of their kind. It was his pride that no form ever drafted by him was ever overturned by the higher courts of the State.

Mr. Emerson was a Mason and was a past master of Rabboni Lodge of Lewiston and also past potentate or Kora Temple, Nobles of the Mystic Shrine. He was one of the charter members of the Calumet Club. A wife survives him.

ALBION K. P. KNOWLTON.

Albion K. P. Knowlton of Lewiston was born at New Portland, Me., December 10, 1829, and died at Lewiston, September 16, 1908. He fitted for college at Hebron Academy, and was graduated at Colby, then Waterville College in 1854. After graduation he was principal of Thomaston Academy from 1856 to 1859, and of the Lewiston high school from 1860 to 1863.

While teaching at Thomaston he became interested in the law and through the advice of the late Hon. A. P. Gould was induced to make that his life profession. He studied in the office of Fessenden & Frye of Lewiston and was admitted to the bar in 1860, continuing to teach for three years longer, however.

He was an active republican and represented his ward in the board of aldermen in 1871, 1886 and 1887. He was for two terms also chairman of the Lewiston board of registration. In 1872 he was appointed judge of the Lewiston Municipal Court,

holding the office for four years.

Judge Knowlton always practiced his profession in Lewiston, where he was recognized as a careful, well read attorney, of the highest integrity. He was a 32d degree Mason, a past master of Rabboni Lodge and of King Hiram Royal Arch Chapter, and a member of Dunlap Council of Royal and Select Masters of Lewiston, and of Lewiston Commandery of Knights Templar. A wife and one daughter, the wife of Hon. Clarence C. Smith of Everett, Mass., registrar of the Massachusetts land office, survive him.

Amended By-Laws of the

MAINE STATE BAR ASSOCIATION

ARTICLE 1. MEMBERSHIP.

Members of the Bar in this State shall be eligible to membership and shall be elected at any legal meeting, upon the nomination of the committee on membership.

ARTICLE 2. OFFICERS.

The officers of this Association shall be a president, three vice-presidents, an executive committee, a committee on law reform, a committee on legal education and admission to the bar, a committtte on legal history, a secretary and a treasurer. All these officers shall be elected by ballot at the annual meeting and shall hold office until others are elected and qualified in their stead.

Other standing committees than those above specified may be provided by the Association from time to time as may be found expedient.

ARTICLE 3. PRESIDENT.

The president, or in his absence one of the vice-presidents, shall preside at all meetings of the Association. The president shall be, *ex-officio*, a member of the executive committee.

ARTICLE 4. EXECUTIVE COMMITTEE.

The executive committee shall consist of four members beside the president. They shall have charge of the affairs of the Association, make arrangements for meetings, order the disbursement of the funds of the Association, audit its accounts, and have such other powers as may be conferred on them by vote at any meeting of the Association.

ARTICLE 5. COMMITTEE ON LAW REFORM.

The committee on law reform shall consist of five members. It shall be the duty of this committee to consider and report to the Association such amendments of the law as should in their opinion be adopted; also to scrutinize proposed changes of the law, and when necessary report upon the same; also to observe the practical working of the judicial system of the State and recommend by written or printed reports, from time to time, any changes therein which experience or observation may suggest.

ARTICLE 6. COMMITTEE ON LEGAL EDUCATION.

The committee on legal education shall consist of one member from each county represented in the Association. Its duty shall be to prepare and report a system of legal education and for examination and admission to the practice of the profession in this State, and report from time to time such changes in the system of examination and admission as may be deemed advisable.

ARTICLE 7. COMMITTEE ON MEMBERSHIP.

The committee on membership shall consist of one member from each county represented in the Association. All applications for membership shall be made to the member from the county where the applicant resides, if any, otherwise to any member of the committee. Applicants shall be nominated for membership by the concurrence of three members of this committee.

ARTICLE 8. COMMITTEE ON LEGAL HISTORY.

The committee on legal history shall consist of so many members as the Association shall, from year to year, appoint.

Its duty shall be to provide for the preservation in the archives of the society, of the record of such facts relating to the history of the profession as may be of interest, and of suitable written or printed memorials of the lives and characters of distinguished members of the profession.

ARTICLE 9. SECRETARY.

The secretary shall keep the records of the Association, have charge of its archives, and discharge such other duties as the Association may require.

ARTICLE 10. TREASURER.

The treasurer shall collect and receive the dues of the Association, keep and by order of the executive committee disburse its funds, and discharge such other duties as may pertain to his office. Any person may fill the office of both secretary and treasurer if elected thereto. A vacancy occurring in either of these offices may be filled by appointment of the executive committee.

ARTICLE 11. MEETINGS.

The annual meeting of the Association shall be held on the second Wednesday of January, at such place in the city of Augusta in the years in which the Legislature shall be in session, and in the alternate years at such place and time as the executive committee may determine. Special meetings may be called by the president, on application in writing of five members, ten days' notice of which by mail shall be given to each member by the secretary, stating the object of the meeting. Fifteen members shall constitute a quorum at any meeting.

ARTICLE 12. ANNUAL DUES.

The annual dues shall be one dollar for each member, payable to the treasurer on or before the first day of June in each year.

Failure to pay the annual due for two years in succession shall terminate the membership of the person in default.

ARTICLE 13. EXPULSION OF MEMBERS.

Any member may be expelled for misconduct, professional or otherwise, by a two-thirds vote of the members present at any meeting after proper notice of the charges; and all the interest of any member in the property of the Association upon the termination of his membership, by expulsion, resignation or otherwise, shall thereupon vest absolutely in the Association.

ARTICLE 14. AMENDMENTS.

These by-laws may be amended only by a two-thirds vote of the members present at an annual meeting of the Association.

OFFICERS SINCE ORGANIZATION.

Presidents.

CHARLES F. LIBBY, Portland, 1891 to 1896.

HERBERT M. HEATH, Augusta, 1896 to 1897.

FRANKLIN A. WILSON, Bangor, 1897 to 1898.

CHARLES E. LITTLEFIELD, Rockland, 1898 to 1899.

WALLACE H. WHITE, Lewiston, 1899 to 1902.

JOSEPH W. SYMONDS, Portland, 1902 to 1903.

JOSEPH C. HOLMAN, Farmington, 1903 to 1904.

GEORGE D. BISBEE, Rumford Falls, 1904 to 1905.

ORVILLE D. BAKER, Augusta, 1905 to Aug. 16, 1908.*

LUERE B. DEASY, Bar Harbor, 1909 to

Secretary and Treasurer.

LESLIE C. CORNISH, Augusta, 1891 to 1907.

NORMAN L. BASSETT, Augusta, 1907 to

* Deceased.

Members of the

Maine State Bar Association

1908 and 1909

Androscoggin County.

Tascus Atwood, - - -	Auburn.
D. J. Callahan, - - -	Lewiston.
Charles B. Carter, - -	Auburn.
Seth M. Carter - - -	Auburn.
J. G. Chabot, - - -	Lewiston.
W. H. Cornforth, - -	Auburn.
Franklin M. Drew, - -	Lewiston.
Willard F. Estey, - -	Lewiston.
S. M. Farnum, Jr., - -	Auburn.
W. H. Judkins, - - -	Lewiston.
P. H. Kelleher, - - -	Auburn.
Rogers P. Kelley, - -	Auburn.
Jesse M. Libby, - - -	Mechanic Falls.
F. E. Ludden, - - -	Auburn.
Harry Manser, - - -	Auburn.
J. H. Maxwell, - - -	Livermore Falls.
George S. McCarthy, - -	Lewiston.
D. J. McGillicuddy, - -	Lewiston.
Frank A. Morey, - - -	Lewiston.
John A. Morrill, - - -	Auburn.

Wm. H. Newell, - - -	Lewiston.
Augustus P. Norton, - -	Lewiston.
Henry W. Oakes, - - -	Auburn.
James A. Pulsifer, - - -	Auburn.
John L. Reade, - - -	Lewiston.
W. B. Skelton, - - -	Lewiston.
Reuel W. Smith, - - -	Auburn.
A. E. Verrill, - - -	Auburn.
W. H. Watson, - - -	Auburn.
Wallace H. White, - -	Lewiston.
Wallace H. White, Jr., - -	Lewiston.
George C. Wing, - - -	Auburn.
George C. Wing, Jr., - -	Auburn.
George H. Winn, - -	Lewiston.

Aroostook County.

James Archibald, - - -	Houlton.
Walter Cary, - - - -	Houlton.
Roland E. Clark, - . -	Houlton.
Charles F. Daggett, - -	Presque Isle.
F. G. Dunn, - - - -	Ashland.
Willis B. Hall, - - -	Caribou.
Ira G. Hersey, - - -	Houlton.
E. A. Holmes, - - -	Caribou.
Wallace R. Lumbert, - -	Caribou.
Howard Pierce, - - -	Fort Kent.
Llewellyn Powers,* - - -	Houlton.
Beecher Putnam, - - -	Houlton.
H. W. Safford, - - -	Mars Hill.
R. W. Shaw, - - -	Houlton.
S. S. Thornton, - - -	Houlton.

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E. A. Holmes, - - -	Caribou.
Wallace R. Lumbert, - -	Caribou.
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Beecher Putnam, - - -	Houlton.
H. W. Safford, - - -	Mars Hill.
R. W. Shaw, - - -	Houlton.
S. S. Thornton, - - -	Houlton.

* Deceased.

Cumberland County.

George H. Allan, - - -	Portland.
P. P. Baxter, Jr., - - -	Portland.
George E. Bird,† - - -	Portland.
William Bradley, - - -	Portland.
Wilford G. Chapman, - -	Portland.
Frederick V. Chase, - -	Portland.
Albro E. Chase, - - -	Portland.
Nathan Clifford, - - -	Portland.
Charles S. Cook, - - -	Portland.
John F. Dana, - - -	Portland.
Liberty B. Dennett, - -	Portland.
Morrill N. Drew, - - -	Portland.
Josiah H. Drummond, Jr., -	Portland.
Isaac W. Dyer, - - -	Portland.
John H. Fogg,* - - -	Portland.
James C. Fox, - - -	Portland.
M. P. Frank, - - -	Portland.
Eben W. Freeman, - - -	Portland.
Clarence Hale, - - -	Portland.
Frederick Hale, - - -	Portland.
C. A. Hight, - - - -	Portland.
Leroy S. Hight, - - -	Portland.
Wm. M. Ingraham, - -	Portland.
Howard R. Ives, - - -	Portland.
Hiram Knowlton, - - -	Portland.
W. J. Knowlton, - - -	Portland.
Seth L. Larrabee, - - -	Portland.
C. Thornton Libby, - -	Portland.
Charles F. Libby, - - -	Portland.

* Deceased.

† Appointed Justice Supreme Judicial Court.

Ira S. Locke, - - -	Portland.
Wm. H. Looney, - - -	Portland.
John J. Lynch, - - -	Portland.
Frank H. Marshall, - - -	Portland.
Chas. P. Mattocks, - -	Portland.
John F. A. Merrill, - -	Portland.
Carroll W. Morrill, - - -	Portland.
Wm. H. Motley, - - -	Woodfords.
Augustus F. Moulton, - -	Portland.
David E. Moulton, - - -	Portland.
George F. Noyes, - - -	Portland.
Irving W. Parker, - - -	Portland.
James R. Parsons, - - -	Portland.
Franklin C. Payson, - -	Portland.
B. S. Peacock, - - -	Freeport.
Barrett Potter, - - -	Brunswick.
Wm. L. Putnam, - - -	Portland.
Edward M. Rand, - - -	Portland.
Edward C. Reynolds, - -	Portland.
F. W. Robinson, - - -	Portland.
J. H. Rousseau, - - -	Brunswick.
Clarence E. Sawyer, - -	Brunswick.
George M. Seiders, - -	Portland.
David W. Snow, - - -	Portland.
H. W. Swasey, - - -	Portland.
Joseph W. Symonds, - -	Portland.
Benj. Thompson, - - -	Portland.
F. E. Timberlake, - - -	Portland.
Edward F. Tompson, - -	Portland.
Levi Turner, - - - -	Portland.
H. M. Verrill, - - -	Portland.
Harry R. Virgin, - - -	Portland.
Augustus H. Walker, - -	Bridgton.
F. S. Waterhouse, - - -	Limerick.

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M. P. Frank, - - -	Portland.
Eben W. Freeman, - - -	Portland.
Clarence Hale, - - -	Portland.
Frederick Hale, - - -	Portland.
C. A. Hight, - - - -	Portland.
Leroy S. Hight, - - -	Portland.
Wm. M. Ingraham, - -	Portland.
Howard R. Ives, - - -	Portland.
Hiram Knowlton, - - -	Portland.
W. J. Knowlton, - - -	Portland.
Seth L. Larrabee, - - -	Portland.
C. Thornton Libby, - -	Portland.
Charles F. Libby, - - -	Portland.

* Deceased.

† Appointed Justice Supreme Judicial Court.

Ira S. Locke, - - - Portland.
Wm. H. Looney, - - - Portland.
John J. Lynch, - - - Portland.
Frank H. Marshall, - - - Portland.
Chas. P. Mattocks, - - Portland.
John F. A. Merrill, - - Portland.
Carroll W. Morrill, - - - Portland.
Wm. H. Motley, - - - Woodfords.
Augustus F. Moulton, - - Portland.
David E. Moulton, - - - Portland.
George F. Noyes, - - - Portland.
Irving W. Parker, - - - Portland.
James R. Parsons, - - - Portland.
Franklin C. Payson, - - Portland.
B. S. Peacock, - - - Freeport.
Barrett Potter, - - - Brunswick.
Wm. L. Putnam, - - - Portland.
Edward M. Rand, - - - Portland.
Edward C. Reynolds, - - Portland.
F. W. Robinson, - - - Portland.
J. H. Rousseau, - - - Brunswick.
Clarence E. Sawyer, - - Brunswick.
George M. Seiders, - - Portland.
David W. Snow, - - - Portland.
H. W. Swasey, - - - Portland.
Joseph W. Symonds, - - Portland.
Benj. Thompson, - - - Portland.
F. E. Timberlake, - - - Portland.
Edward F. Tompson, - - Portland.
Levi Turner, - - - - Portland.
H. M. Verrill, - - - Portland.
Harry R. Virgin, - - - Portland.
Augustus H. Walker, - - Bridgton.
F. S. Waterhouse, - - - Limerick.

John A. Waterman, - -	Gorham.
Lindley M. Webb, - - -	Portland.
Richard Webb, - - -	Portland.
John Wells, - - - -	Portland.
John S. White, - - -	Naples.
Robert T. Whitehouse, - -	Portland.
Virgil C. Wilson, - - -	Portland.
Albert S. Woodman, - -	Portland.
Edward Woodman, - -	Portland.

Franklin County.

Harry F. Beedy, - - -	Phillips.
S. Clifford Belcher,* - -	Farmington.
Cyrus N. Blanchard, - -	Wilton.
Frank W. Butler, - - -	Farmington.
A. F. Fenderson, - - -	Farmington.
E. O. Greenleaf, - - -	Farmington.
Joseph C. Holman, - -	Farmington.
N. P. Noble, - - -	Phillips.
Elmer E. Richards, - -	Farmington.
Philip H. Stubbs, - - -	Strong.
Josiah H. Thompson, - -	Farmington.

Hancock County.

Wm. O. Buck, - - -	Bucksport.
F. Carroll Burrill, - - -	Ellsworth.
B. E. Clark, - - - -	Bar Harbor.
Edward S. Clark, - - -	Bar Harbor.
O. P. Cunningham, - - -	Bucksport.
L. B. Deasy, - - - -	Bar Harbor.
O. F. Fellows, - - -	Bucksport.

* Deceased.

Geo. R. Fuller, - - -	S. W. Harbor.
L. F. Giles, - - - -	Ellsworth.
Hannibal E. Hamlin, - -	Ellsworth.
A. W. King,† - - - -	Ellsworth.
Sumner P. Mills, - - -	Stonington.
Seth W. Norwood, - - -	S. W. Harbor.
John A. Peters, - - -	Ellsworth.
E. P. Spofford, - - -	Deer Isle.
B. E. Tracy, - - - -	Winter Harbor.
Geo. M. Warren, - - -	Castine.
Chas. H. Wood, - - -	Bar Harbor.

Kennebec County.

E. C. Ambrose, - - -	Readfield.
Charles L. Andrews, - -	Augusta.
Orville D. Baker,* - - -	Augusta.
George K. Bassett, - - -	Augusta.
Norman L. Bassett, - -	Augusta.
Geo. K. Boutelle, - - -	Waterville.
F. E. Brown, - - - -	Waterville.
Simon S. Brown,* - - -	Waterville.
Lewis A. Burleigh, - - -	Augusta.
Leroy T. Carleton, - - -	Winthrop.
F. W. Clair, - - - -	Waterville.
Frank L. Dutton, - - -	Augusta.
Harvey D. Eaton, - - -	Waterville.
Frank G. Farrington, - -	Augusta.
Geo. W. Field, - - -	Oakland.
W. H. Fisher, - - -	Augusta.
Dana P. Foster, - - -	Waterville.

* Deceased.

† Appointed Justice Supreme Judicial Court.

H. E. Foster, - - -	Winthrop.
A. M. Goddard, - - -	Augusta.
Wm. T. Haines, - - -	Waterville.
Herbert M. Heath, - -	Augusta.
Geo. W. Heselton, - - -	Gardiner.
Guy A. Hildreth, - - -	Gardiner.
Melvin S. Holway, - -	Augusta.
C. F. Johnson, - - -	Waterville.
Treby Johnson, - - -	Augusta.
Charles W. Jones, - - .	Augusta.
Samuel W. Lane,* - - -	Augusta.
Thomas Leigh, - - -	Augusta.
Fremont J. C. Little, - -	Augusta.
Thomas J. Lynch, - - -	Augusta.
Benedict F. Maher, - -	Augusta.
Arthur L. Perry, - - -	Gardiner.
Warren C. Philbrook, - -	Waterville.
F. K. Shaw, - - - -	Waterville.
G. T. Stevens, - - -	Augusta.
Asbury C. Stilphen, - -	Gardiner.
Lendall Titcomb,* - - -	Augusta.
Henry S. Webster, - - -	Gardiner.
Joseph Williamson, - -	Augusta.

Knox County.

William T. Cobb, - - -	Rockland.
Edw. K. Gould, - - -	Rockland.
Frank H. Ingraham, - -	Rockland.
Arthur S. Littlefield, - -	Rockland.

* Deceased.

Charles E. Littlefield, - -	Rockland.
J. H. Montgomery, - - -	Camden.
Jos. E. Moore, - - -	Thomaston.
David N. Mortland, - -	Rockland.
Reuel Robinson, - - -	Camden.
L. M. Staples, - - -	Washington.
Frederick S. Walls, - -	Vinal Haven.

Lincoln County.

Ozro D. Castner,* - - -	Waldoboro.
Everet Farrington, - -	Waldoboro.
Emerson Hilton, - - -	Wiscasset.
Wm. H. Hilton, - - -	Damariscotta.

Oxford County.

George D. Bisbee, - - -	Rumford Falls.
L. W. Blanchard, - - -	Rumford Falls.
P. C. Fickett, - - - -	West Paris.
Seth W. Fife, - - -	Fryeburg.
A. E. Herrick, - - -	Bethel.
Alfred S. Kimball, - - -	Norway.
Ralph T. Parker, - - -	Rumford Falls.
John P. Swasey, - - -	Canton.
George A. Wilson,* - -	South Paris.
J. S. Wright, - - -	South Paris.

Penobscot County.

B. C. Additon, - - -	Bangor.
Frederick H. Appleton, -	Bangor.

* Deceased.

Charles A. Bailey, - -	Bangor.
Victor Brett, - - - -	Bangor.
James H. Burgess, - -	Bangor.
Hugh R. Chaplin, - - -	Bangor.
W. C. Clark, - - -	Lincoln.
Milton S. Clifford, - - -	Bangor.
Hugo Clark, - - -	Bangor.
J. Willis Crosby, - - -	Dexter.
Charles J. Dunn, - - -	Orono.
Bertram L. Fletcher, - -	Bangor.
P. H. Gillin, - - - -	Bangor.
Joseph F. Gould, - - -	Old Town.
Charles Hamlin, - - -	Bangor.
Henry P. Haynes, - - -	East Corinth.
Mathew Laughlin, - - -	Bangor.
Forrest J. Martin, - - -	Bangor.
John R. Mason, - - -	Bangor.
Alanson J. Merrill, - -	Bangor.
Henry L. Mitchell, - - -	Bangor.
F. H. Parkhurst, - - -	Bangor.
H. H. Patten, - - - -	Bangor.
Wm. B. Pierce, - - -	Bangor.
T. H. B. Pierce, - - -	Dexter.
W. H. Powell, - - -	Old Town.
Allen E. Rogers, - - -	Orono.
Erastus C. Ryder, - - -	Bangor.
James M. Sanborn,* - -	Newport.
Clarence Scott, - - -	Old Town.
George T. Sewall, - - -	Old Town.
Bertram L. Smith, - - -	Patten.
Ruel Smith,* - - - -	Bangor.

* Deceased.

Louis C. Stearns, Jr., - -	Bangor.
Thos. W. Vose,* - - -	Bangor.
Peregrine White, - - -	Bangor.
F. J. Whiting, - - -	Old Town.
Franklin A. Wilson, - -	Bangor.
John Wilson, - - -	Bangor.
Charles F. Woodard,*† - -	Bangor.

Piscataquis County.

Calvin W. Brown, - - -	Dover.
M. L. Durgin, - - -	Milo.
Frank E. Guernsey, - -	Dover.
Henry Hudson, - -	Guilford.
James H. Hudson, - - -	Guilford.
Willis E. Parsons, - - -	Foxcroft.
Alfred R. Peaks, - - -	Foxcroft.
Francis C. Peaks, - - -	Dover.
Joseph B. Peaks, - - -	Dover.
John F. Sprague, - - -	Monson.

Sagadahoc County.

Arthur J. Dunton, - - -	Bath.
Sanford L. Fogg, - - -	Bath.
Wm. T. Hall, - - -	Richmond.
Wm. T. Hall. Jr., - - -	Bath.
George E. Hughes, - -	Bath.
Charles D. Newell, - - -	Richmond.
Harold M. Sewall, - - -	Bath.
Franklin P. Sprague, - -	Bath.
Frank L. Staples, - -	Bath.
Joseph M. Trott, - - -	Bath.

* Deceased.

† Appointed Justice Supreme Judicial Court.

Somerset County.

Turner Buswell, - - -	Solon.
George M. Chapman, - -	Fairfield.
Abel Davis,* - - -	Pittsfield.
Bernard Gibbs, - - -	Madison.
Forrest Goodwin, - -	Skowhegan.
George W. Gower, - -	Skowhegan.
Fred F. Lawrence, - -	Skowhegan.
Daniel Lewis, - - -	Skowhegan.
John W. Manson, - -	Pittsfield.
Edward F. Merrill, - -	Skowhegan.
E. N. Merrill, - - -	Skowhegan.
Augustine Simmons, - -	No. Anson.
C. O. Small, - - -	Madison.
Daniel Steward, - - -	No. Anson.
L. L. Walton, - -	Skowhegan.
George G. Weeks, - -	Fairfield.

Waldo County.

A. A. Beaton, - - -	Stockton Springs.
Ellery Bowden, - - -	Winterport.
Fred W. Brown, - - -	Belfast.
R. F. Dunton, - - -	Belfast.
George E. Johnson, - -	Belfast.
Arthur Ritchie, - - -	Liberty.
Wm. P. Thompson, - -	Belfast.

Washington County.

James M. Beckett, - -	Calais.
Frederick Bogue, - -	East Machias.
F. I. Campbell, - - -	Cherryfield.

* Deceased.

George A. Curran, - -	Calais.
Clement B. Donworth, -	Machias.
George R. Gardner, - -	Calais.
H. H. Gray, - - - -	Millbridge.
F. B. Livingstone, - - -	Calais.
J. H. McFaul, - - -	Eastport.
I. G. McLarren, - - -	Eastport.
B. B. Murray,* - - -	Calais.
L. H. Newcomb, - - -	Eastport.
B. Rogers, - - - -	Pembroke.

York County.

Fred J. Allen, - - -	Sanford.
James O. Bradbury, - -	Saco.
Benjamin F. Cleaves, - -	Biddeford.
John B. Donovan,* - -	Alfred.
Walter H. Downs, - - -	So. Berwick.
George A. Emery, - - -	Saco.
Geo. D. Emery, - - -	E. Lebanon.
Willis T. Emmons, - -	Saco.
Hampden Fairfield, - -	Saco.
Walter J. Gilpatrick, - -	Biddeford.
George A. Goodwin, - -	Springvale.
John M. Goodwin,* - -	Biddeford.
Frank M. Higgins, - -	Limerick.
Luther R. Moore, - - -	Saco.
W. P. Perkins, - - -	Cornish
Charles H. Prescott, - -	Biddeford.
Moses A. Safford, - - -	Kittery.
John C. Stewart, - - -	York Village.
Edwin Stone, - - -	Biddeford.

* Deceased.

OFFICERS OF THE ASSOCIATION

President.

Luere B. Deasy,	- - -	Bar Harbor.

Vice-Presidents.

George C. Wing,	- - -	Auburn.
Frederick H. Appleton,	- -	Bangor.
C. F. Johnson,	- - -	Waterville.

Secretary and Treasurer.

Norman L. Bassett,	- -	Augusta.

Executive Committee.

W. H. Newell,	- - -	Lewiston.
Chas. S. Cook,	- - -	Portland.
O. F. Fellows,	- - -	Bucksport.
John W. Manson,	- - -	Pittsfield.
Jos. E. Moore,	- - -	Thomaston.

Committee on Membership.

Reuel W. Smith,	- - -	Auburn.
Beecher Putnam,	- - -	Houlton.
Morrill N. Drew,	- - -	Portland.

Cyrus N. Blanchard, - -	Wilton.
B. E. Tracy, - - - -	Winter Harbor.
J. H. Montgomery, - -	Camden.
Joseph Williamson, - -	Augusta.
Emerson Hilton, - - -	Wiscasset.
A. E. Herrick, - - -	Bethel.
M. Laughlin, - - -	Bangor.
Frank E. Guernsey, - -	Dover.
W. T. Hall, Jr., - - -	Bath.
C. O. Small, - - - -	Madison.
R. F. Dunton, - - -	Belfast.
F. I. Campbell, - - -	Cherryfield.
George A. Goodwin, - -	Springvale.

Committee on Law Reform.

Charles F. Libby, - - -	Portland.
John A. Morrill, - - -	Auburn.
E. C. Ryder, - - -	Bangor.
Leroy T. Carleton, - - -	Winthrop.
E. N. Merrill, - - -	Skowhegan.

Committee on Legal History.

J. L. Reade, - - -	Lewiston.
Ira G. Hersey, - - -	Houlton.
Robert T. Whitehouse, - -	Portland.
S. Clifford Belcher, - -	Farmington.
A. W. King, - - -	Ellsworth.
Norman L. Bassett, - -	Augusta.
Arthur S. Littlefield, - -	Rockland.
William H. Hilton, - -	Damariscotta.
Ralph T. Parker, - - -	Rumford Falls.

Charles Hamlin, - - -	Bangor.
Henry Hudson, - - -	Guilford.
Jos. M. Trott, - - -	Bath.
Forrest Goodwin, - - -	Skowhegan.
Ellery Bowden, - - -	Winterport.
L. H. Newcomb, - - -	Eastport.
Fred J. Allen, - - -	Sanford.

Committee on Legal Education.

Tascus Atwood, - - -	Auburn.
R. W. Shaw, - - -	Houlton.
Benjamin Thompson, - -	Portland.
N. P. Noble, - - - -	Phillips.
H. E. Hamlin, - - -	Ellsworth.
Frank G. Farrington, - -	Augusta.
Reuel Robinson, - - -	Camden.
O. D. Castner, - - -	Waldoboro.
A. S. Kimball, - - -	Norway.
Bertram L. Smith, - - -	Patten.
W. E. Parsons, - - -	Foxcroft.
Charles D. Newell, - - -	Richmond.
George G. Weeks, - - -	Fairfield.
Wm. P. Thompson, - -	Belfast.
George A. Curran, - - -	Calais.
Willis T. Emmons, - -	Saco.

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MAINE STATE BAR ASSOCIATION

NINETEEN HUNDRED TEN AND ELEVEN

VOLUME SEVENTEEN

Report

OF THE

MAINE STATE BAR ASSOCIATION

FOR

1910 AND 1911

VOLUME 17

With the Proceedings of the Annual Meeting held at Augusta, Maine, January 11, 1911.

AUGUSTA:
PRESS OF CHARLES E. NASH & SON
1911

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MAY 2 . 1940

OFFICE OF SECRETARY OF
MAINE STATE BAR ASSOCIATION.

AUGUSTA, MAINE, January 4, 1911

DEAR SIR:— The annual meeting of the Maine State Bar Association will be held in the Senate Chamber, Augusta, Maine, on Wednesday, January 11, 1911, at 2.30 o'clock P. M. The order of business will be as follows:

I Reports of Secretary and Treasurer.

II Address by Honorable Frank S. Streeter of Concord, New Hampshire.

III Reports of Committees.

1 Committee on Membership.

2 Committee on Legal History.

3 Committee on Legal Education.

4 Committee on Law Reform.

The following matters were referred to this Committee:

(a) Oath of admission to bar.

(b) Legislation relating to expert evidence.

(c) Recommendations of former President Baker.

(1) Right of excepting to refusal of court to direct verdict for defendant.

(2) Right of Law Court to order final judgment instead of new trial.

(3) Right to petition for reargument before decision of Law Court shall take effect.

(4) Reporting evidence in narrative form.

IV Election of new members.

V Election of officers.

VI To transact any other business that may properly come before the Association.

Matters on the table.

Establishment of a system of Superior Courts.

The meeting will conclude with a dinner at the Augusta House at 8.15 o'clock P. M. Please notify the Secretary *immediately* by enclosed postal whether you will be present at the dinner. This is necessary in order to complete the arrangements.

NORMAN L. BASSETT, Secretary.

Maine State Bar Association

ANNUAL MEETING

AUGUSTA, MAINE, January 11, 1911.

In accordance with the call for the meeting, which was duly sent to each member of the Association, as provided by the by-laws, the annual meeting of the Maine State Bar Association was held in the Senate Chamber, State House, on Wednesday, January 11, 1911, at 2.30 P. M.

The meeting was called to order by the President of the Association, Hon. L. B. Deasy, of Bar Harbor.

PRESIDENT DEASY: Gentlemen, the first business of the meeting is the report of the Secretary and Treasurer.

The Secretary's report was then submitted as follows:

REPORT OF SECRETARY

To the Maine State Bar Association:

The present membership of the Association is two hundred ninety-five, divided among the several counties as follows:

Androscoggin	34	Oxford	9
Aroostook	13	Penobscot	33
Cumberland	64	Piscataquis	9
Franklin	9	Sagadahoc	10
Hancock	15	Somerset	15
Kennebec	36	Waldo	7
Knox	11	Washington	11
Lincoln	2	York	17
			295

The by-laws of the Association provide that the annual dues shall be payable on June 1st, and as first adopted provided that "failure to pay * * * within thirty days after that date shall terminate the membership of the person in default." In his report for the year 1894 Secretary Cornish said, "I confess I have not followed that by-law to the letter but have accepted the dues whenever paid. However, I do not see the necessity of keeping a by-law with so little merit and hope you will today amend it either by omitting the last clause altogether or making the term longer, perhaps a failure to pay the dues for two successive years." The Secretary also stated

that in response to a second notice which he had given he had received letters from many members stating that the failure to remit was due to mere oversight.

In accordance with the suggestion of the Secretary the Association at that meeting by unanimous vote amended the by-laws changing the words "within thirty days after said date" to "for two years in succession."

Your present Secretary has likewise not followed to the letter the amended by-law and the names of all members, whether in arrears for the two years in succession or not, have been published in the reports. The notice sent to each member annually has stated how much is due from such member. In many cases it would appear that because of neglect to make prompt remittance the matter was overlooked. The names of some of the delinquent members forbid the conclusion that they do not desire to pay and continue their membership in the Association. In a number of instances remittance has been made of dues for four or five years. There are today sixty-one members who have not paid dues for four successive years, seventy-two for three years, eighty-eight for two years and one hundred and nineteen for the year 1910. The reports of the Association are more complete and expensive to publish than formerly and a copy is sent to each member.

It seems best now to bring this by-law to the attention of all members who may be in arrears in order that the list of members as published may contain as it

purports the names of active members and in order that expense may be saved to the Association.

Under the present by-laws the failure to pay terminates absolutely the membership. It might be better that such failure should operate to suspend membership leaving to the member the privilege of re-instatement upon payment of all arrears at the time of suspension and also, if the Association deems best, all intervening dues to the time of such re-instatement. Your Secretary would therefore suggest the consideration of this amendment,—"Failure to pay any annual due within two years shall suspend the membership of the person in default. If such person shall pay at any time to the Treasurer all arrears due from him at the time of such suspension and also all intervening dues to the time of payment, he shall be re-instated in membership."

It is to be hoped that through the efforts of members of the Association and particularly of the Committee on Membership the number of active members may be increased.

NORMAN L. BASSETT,

Secretary.

REPORT OF TREASURER

NORMAN L. BASSETT, Treasurer, in account with Maine State Bar Association for the years 1909 and 1910.

DR.

Date		Item		
1909				
Jan.	1,	To cash balance from preceding year,		$156 93
Jan.	14,	To amount received from forty dinner tickets, at $3.00 each,		120 00
Feb.	1,	To interest time account, Augusta Trust Co.,	$ 35	
May	1,	To interest time account, Augusta Trust Co.,	1 56	
Aug.	1,	To interest time account, Augusta Trust Co.,	1 48	
Nov.	1,	To interest time account, Augusta Trust Co.,	72	
				$4 11
Jan.	1,	To dues collected, to wit:		
to		for 1903,	$ 1 00	
Dec.	31,	for 1904,	1 00	
		for 1905,	3 00	
		for 1906,	4 00	
		for 1907,	6 00	
		for 1908,	27 00	
		for 1909,	189 00	
		for 1910,	1 00	
				$232 00
				$513 04

CR.

Jan. 5,	By paid postals,		$ 2 92	
Jan. 5,	By paid stamped envelopes,		3 39	
Jan. 14,	By paid expenses of dinner,		113 34	
Jan. 14,	By paid room at Augusta House,		3 00	
Jan. 19,	By paid J. Stanley Estes, stenographer, for attendance on meeting and copy notes,		18 00	
Feb. 26,	By paid stamps,		3 07	
May 21,	By paid envelopes,		90	
July 20,	By paid stamps for notices of dues,		5 00	
July 29,	By paid stamps for mailing reports,		12 00	
July 30,	By paid expressage,		70	
July 31,	By paid C. E. Nash & Son, print'g reports,	$123 20		
July 31,	By paid C. E. Nash & Son, printing due notices, etc,	12 05		
July 31,	By paid C. E. Nash & Son, printing envelopes,	70		
			135 95	
Aug. 3,	By paid Secretary and Treasurer,		100 00	
Aug. 31,	By Cash on deposit to balance,		114 77	
				$513 04

Dr.

Date		Item		
1910				
Jan.	1,	To cash balance from preceeding year,		$114 77
Feb.	1,	To interest time account, Augusta Trust Co.,	$1 04	
May	1,	To interest time account, Augusta Trust Co.,	1 10	
Aug.	1,	To interest time account, Augusta Trust Co.,	1 40	
Nov.	1,	To interest time account, Augusta Trust Co.,	2 04	
				$ 5 58
Jan.	1,	To dues collected, to wit:		
to		for 1907,	$ 5 00	
Dec.	31,	for 1908,	10 00	
		for 1909,	24 00	
		for 1910,	174 00	
				$213 00
				$333 35

Cr.

Date		Item		
Jan.	3,	By paid stamps,	$ 6 20	
June	10,	By paid Secretary and Treasurer,	100 00	
Sept.	6,	By paid C. E. Nash & Son, printing,	3 65	
Dec.	31,	By cash on deposit in Augusta Trust Co.,	223 50	
				$333 35

MR. RYDER: Mr. President, I move that the report of the Treasurer be referred to an auditor to be appointed by the chair.

The motion was agreed to, and the President appointed O. F. Fellows as auditor.

Mr. Fellows subsequently submitted his report as auditor as follows:

AUGUSTA, MAINE, January 11, 1911.

I hereby certify that I have examined the accounts of Norman L. Bassett, Treasurer of the Maine State Bar Association, for the years ending December 31, 1909, and December 31, 1910, and find said accounts to be correct and properly vouched for.

O. F. FELLOWS,
Auditing Committee.

And on motion of Mr. Marshall the reports of the Secretary and Treasurer were accepted and approved.

THE PRESIDENT: Is any action to be taken at this time in reference to the recommendation of the Treasurer as to the amendment of the by-laws?

Judge Turner moved that the amendment be adopted as read.

The motion was seconded by Mr. Bradbury.

THE PRESIDENT: This requires a two-thirds vote. The by-laws of the association provide that without special notice the by-laws may be amended by a two-thirds vote of those present. Is that the pleasure of the association?

The motion was agreed to.

On motion of Mr. Tracy it was voted that the report of the committee on membership be taken up out of order.

MR. MONTGOMERY: Mr. President, the committee have received applications as follows and recommend that they be elected as members:

	CUMBERLAND COUNTY	When admitted to Maine Bar.
Edward W. Wheeler,	Brunswick,	April 21, 1900.
	KENNEBEC COUNTY	
Samuel Titcomb,	Augusta,	August 21, 1908.
	KNOX COUNTY	
Alan L. Bird,	Rockland,	Feb. 20, 1904.
Edward B. Burpee,	Rockland,	Jan. 30, 1904.
R. I. Thompson,	Rockland,	Sept. 22, 1886.
Oscar H. Tripp,	Rockland,	April, 1877.
C. M. Walker,	Rockland,	March 15, 1886.
	OXFORD COUNTY	
Alton C. Wheeler,	South Paris,	

PENOBSCOT COUNTY

Raymond Fellows,	Bangor,	Aug. 10, 1909.

SOMERSET COUNTY

Harold I. Goss,	Bingham,	Nov. 15, 1909.

YORK COUNTY

Eva E. Bean,	Old Orchard,	May 4, 1909.
Edward F. Gowell,	Berwick,	

THE PRESIDENT: Is it the pleasure of the association that those persons whose names have been read be elected members of the association?

It was agreed to.

On motion of Mr. Marshall it was voted that the report of the committee on legal history be taken up out of order.

THE SECRETARY: There has been no report filed.

THE PRESIDENT: The records show that Ira G. Hersey is a member of that committee.

MR. HERSEY: Mr. President, I think your committee has had no meetings, and as far as I know no matter has come before them and they have no report to make.

On motion of Mr. Staples it was voted that the report of the committee on legal education be taken up out of order.

MR. KIMBALL: Mr. President, as far as I know the committee on legal education is in the same situation as the committee on legal history; they have no report to make.

On motion of Mr. Wilson it was voted that the election of officers be taken up out of order.

On motion of Mr. Drummond it was voted that a committee of three be appointed by the chair to present nominations of officers for the ensuing year.

The President appointed as such committee Messrs. J. H. Drummond, F. E. Timberlake and J. E. Moore.

THE PRESIDENT: According to the regular order of business we are fortunate in having with us today one of the most distinguished of the leaders of the New Hampshire Bar. It gives the chair great pleasure to introduce Hon. Frank S. Streeter of Concord, New Hampshire.

(Applause.)

Address of Hon. Frank S. Streeter

"THE WORLD MOVES"

Mr. President and Gentlemen of the Association:

In the Hall of the Knights at The Hague, I was listening with keenest satisfaction to the masterly arguments of the most eminent lawyers of two great governments, before a tribunal of distinguished jurists selected as final arbitrators of a long drawn out international controversy. It was an impressive spectacle. While reflecting on the tremendous changes now going on in the world, not only with reference to the settlement of international disputes by arbitration instead of war, but in almost every department of human activity and knowledge—your invitation to address this Association was received. Inspired by such surroundings, I accepted without hesitation and I now regret that for many reasons I am compelled to bring so inadequate a contribution to such an occasion.

Less than 300 years ago, the scientists, astronomers and the church believed that this earth stood still and the sun daily circled around it. To question this opinion was regarded by the constituted authorities of the time as scientific and religious heresy; but an Italian astronomer in his impartial search for the truth, came to believe that the world moved and, so believing, had the courage to say it. He met the usual fate of those in any age who dare to question accepted beliefs. Ostracized by the learned societies, pursued with reproaches by their ignorant but noisy camp followers, persecuted by those in authority, he was put to trial for heresy, brought to his knees and forced to pronounce before his judges a shameful abjuration of a belief in a scientific truth which was judicially pronounced to be "accursed, heretical and detestable." As he arose from his humiliation, he is said to have consoled himself by adding in an undertone, "The world does move, notwithstanding."

We have with us still many men, from country storekeepers to managers of great corporations, who have not found out that the world moves and who manage their corporate and business affairs and govern their relations with the public accordingly. They are, however, being gradually retired from business management.

But Galileo was right. The world does move — sometimes slowly — sometimes rapidly — sometimes on wrong but generally on right lines — and always surely; and the question which today confronts us, as members of an honorable profession, whose duty it is to serve the public and the state, is, Are we keeping pace with the movements of the world?

REVOLUTIONARY CHANGES

Instead of submitting an argument upon some abstruse question of law today — let us consider some of these revolutionary changes which are going on about us and in which we, as a profession, either willingly or unwillingly, are compelled to take a part.

As lawyers, it is our duty to avoid delusions, to see things as they are. Our judgment may not approve, but if we are to do our work in this world efficiently, we must look the facts in the face.

Are we as a profession accurately noting and estimating the radical changes, coming under our own eyes, largely within the last twenty-five years?

No longer ago than that, law, religion, education, politics, business and public morals seemed to be established on a fixed and definite basis, and to be measured and valued by definite standards universally accepted. Within twenty-five years, many of these standards and measures of value have been discarded. The American people seem all at once to have determined on a re-examination of the entire foundations of their business and political structures.

RELIGION

Even in religion, creeds have been so modified that the so-called orthodox views of today are quite as liberal and perhaps more tolerant than the views of the Unitarian twenty-five years ago. Bigotry is giving way to toleration. Catholic and Protestant, Jew and Gentile, pagan and Christian are now working together with sympathy and harmony in whatever tends to promote the general good.

EDUCATION

In education, the old methods of training and instruction are constantly being revised. Educational methods, heretofore regarded as settled, are now daily questioned. The academic world is restless and uneasy. Educators are dissatisfied with the results obtained and are speaking out. This general discontent was recently voiced by your own Doctor Hyde of Bowdoin in these words:

> "There are methods tolerated in most of our institutions today that forty years from today will seem antiquated and ridiculous."

LEGISLATION

That "the world moves" and is moving rapidly, in matters where our profession is directly concerned, is shown by the changing trend of legislation governing the relation of individuals to the state.

An increasingly large number of our legislative enactments either command or prohibit the individual to do or not to do things as to which, before the enactment, he had the freedom of choice. Each year the number of legislative bills which might be prefaced by the public command, "Thou shalt" or "Thou shalt not" increases. The steady tendency of legislation is to restrict individual freedom and enlarge the power of the government.

In a recent notable address, Chief Justice Baldwin speaking on the subject, "The Narrowing Circle of Individual Rights," maintained that a revolution is

taking place which is changing the whole face of American society. After a comprehensive summing up of the changes in the law arising from legislative enactment and fresh judicial interpretation, he concludes:

> "It is an age of collectivism. The functions of the state multiply. Its circle of activities expands and the circle of activities around each private individual is correspondingly reduced."

JUDICIAL INTERPRETATION

The world moves, not only through legislative enactment but through fresh judicial interpretation of written constitutions, statutes and the common laws. The doctrine of *stare decisis* must and does yield to the pressure of changed modern conditions.

The permanence of this government rests most securely upon an independent judiciary. That is the corner-stone of the entire governmental structure. If that be withdrawn, the structure will fall.

But fortunately for the stability of the government, the courts have widely recognized that conditions change, that the common law must be flexible, that the interpretation of yesterday may be inadequate to deal with the uses and customs of today, and in their judicial interpretations of constitutions, statutes of the common law, have not confined themselves to the technical written word. As was recently well said:

> "The federal constitution under which we are living is not the written constitution of 1787, but

it is that written constitution plus the decisions of the supreme court of the United States, interpreting and applying it with the habit of the nation which has grown up under it."

"Our written constitution has marched to the tune of progress and with but few changes in its original form."

"To ascertain by study of the books the precedents of times past and then apply them to times present without any recognition of changed conditions is not the function of law courts in modern civilization. Their function is to declare from the experience of the past the fundamental principles of social justice and apply them to the conditions of modern times."

Does any sound lawyer suppose that the framers of the constitution consciously intended to confer upon congress the power, through the postmaster-general or other administrative officer, to exclude from the mails without trial of any kind, and on his own motion, any newspaper or other writing containing any matter which he might regard as injurious to the public? Washington and Jefferson, Webster and Clay, in their days, denounced this doctrine as a total subversion of the constitutional rights of the citizen, but in 1891 the supreme court so decided in *Ex parte Rapier*, 143 U. S. 110.

Public opinion had changed and the judicial interpretation kept pace with it.

This view is well illustrated by the advisory opinion of the eminent justices of your supreme court given to your state senate, in March, 1908, the essentials of which may thus be summarized:

> The state has legislative power to promote the general welfare by laws to regulate or restrict, without compensation to the owner, the cutting or destruction of trees growing on wild lands.
>
> In other words, for the general good, an owner, by legislative enactment, may be compelled to yield somewhat of his unhampered right to make the customary use of his own property.

Whether an opinion so rendered in an advisory form is to be technically regarded the law of Maine, I may not pretend to say; but, with one of your own justices, lawyers of other states may reasonably infer that "While human and judicial natures remain as we know them to be, the opinion of justices will equally be the judgment of the court." May we not conclude that this opinion, although based on the soundest legal principles, would not have been announced fifty years ago, but that the changed modern conditions not only justify but demand it?

ELECTORAL REFORM LAWS

The legislative results of the recent determinations by the American people to re-examine the foundations of their entire business and political structure are startling from the old view points. Let us look at some of the important changes already made. The

recent Electoral Reform Laws have produced fundamental changes in the election of public officers and in the making as well as the administration of the law. Twenty-five years ago, a constitutional amendment to make or veto legislation by direct popular vote, the initiative and referendum, would have been regarded as a radical and fanatical attempt to overturn the entire governmental structure. When South Dakota first adopted the principal in 1898, followed by Utah in 1900 and by Oregon in 1902 (whose experiment in changing the representative form of government to that of pure democracy arrested the attention of every thinking man in the country,) those steps were then regarded in the East, as radical experiments of new and inexperienced Western legislators. But when in 1908, the old conservative state of Maine, by large majorities put the initiative and referendum into her constitution, this explanation is not satisfying. Some other reason is demanded.

THE RECALL

Legislation granting the power to remove or "recall" a public official by popular vote, during the official term for which he was elected, is of recent origin, and is rapidly spreading. Originally adopted and effectively tried in California, it has travelled East and now appears in a modified form in the new charter of the city of Boston. In the daily press, we note that the mayor of Seattle is even now being subjected to this process by a dissatisfied electorate.*

*The most astounding development of the "recall" is found in the proposed Arizona constitution — to be voted on early in February, 1911 — where it is sought to apply the principle to all the judges of the state. A leading journal characterizes the proposed court as "The Bench of the Mob."

COMMISSION GOVERNMENT

The government of cities by commissions, unheard of twenty years ago, is now established by the general laws of many of the states and by special charters in many others, and illustrates another rapid development of changing conditions and the desire of our people to try new governmental methods. Almost every week adds a new city to the list of those adopting this system.

DIRECT PRIMARY LAWS

Already fifteen states have adopted a mandatory primary law, providing for the direct nominations of all public officers by the people rather than by delegate convention. Three additional states have made such a law mandatory for many offices and five others for some offices. Recently adopted in New Hampshire, its operation has been so successful and satisfactory as to command the strong favorable opinion of men originally hostile to the plan. If it has any enemies, which I doubt, they can have no hope of securing a repeal of this law.

ELECTION U. S. SENATORS

An amendment to the federal constitution, substituting popular election of United States senators for the present constitutional methods would have been formerly regarded as a radical uprooting of the foundations laid by the fathers. But this fundamental change seems to be directly upon us. Thirty-two

state legislatures have already declared for it. It is being demanded in many platforms of both the great political parties. Five times the national house has voted overwhelmingly in its favor and it will undoubtedly come up for direct action before the senate during this session.

POPULAR DISTRUST

We should not delude ourselves as to the real meaning of these movements. This protest against the representative form of government established by the fathers grows out of popular distrust of the integrity of the representatives and agents. The people have come to believe that their representatives (in any office) are often controlled by private relations with powerful corporate and private interests instead of by their public duty. This distrust, often unfounded, arises from ignorance of the influences which are at work. But the distrust is here. Lack of confidence in many of their own representatives and agents has increased in the general mind, and the people are seeking to remedy this evil by overturning representative government, eliminating their representatives, delegates and agents and, so far as practicable, assuming direct control of making and vetoing laws.

Managers of corporate and other industries, both large and small, cannot safely shut their eyes, disregard these facts, or hesitate to make reasonable readjustments of their business relations with the public. When the legal advisers of business and property interests realize these changes and predicate

their advice upon things as they are today, and not upon things as they were twenty-five years ago, the more valuable will be their advice, and the sooner will they regain the now impaired confidence of the community whose servants they are.

INHERITANCE TAXES

Another striking proof that the world is moving rapidly is found in the recent development of the laws taxing inheritances. These laws are based on the theory that there is no natural right of inheritance, but that property passes from decedent to heir only by consent of the state, and in permitting such transfer the state may impose such conditions as it chooses.

In 1892 there were only nine states which imposed such taxes, but in 1908 the number of states had increased to thirty-six. The significance of this recent movement is not so much in its establishment as in the progressive rates. In about one half the states the rates are graded and highly progressive. In spite of the difficulties in administration as between the states, sometimes compelling the same property to pay two or even three maximum taxes, it is probable that these inequalities will be corrected by legislation and that the principle has been permanently adopted under our law.

WORKMEN'S COMPENSATION ACTS

Another radical development on different lines although in the same general direction has suddenly appeared. Upon the attention of the courts and the

profession as well as the entire industrial community there now presses a revolutionary change whose importance seems to justify special consideration here. I refer to the so-called workmen's compensation acts.

Twenty-five years ago the law of negligence as applied to the relations of master and servant had long been definitely established. While courts differ in their administration of this law the general principles governing the employer's liability in case of accident to his workmen are in substance the same.

COMMON LAW

For purpose of camparison the common law now in force may be summarized (inadequately) by saying that it imposes four duties on the master — (1) to provide a reasonably safe place to work; (2) to provide reasonably safe tools and appliances; (3) to be reasonably careful in hiring competent fellow workmen; (4) to provide suitable rules for carrying on the work. If the employer fails to perform any of these duties and a workman is thereby injured the latter may recover damages on the ground of the employer's negligence or fault.

But notwithstanding the fault of the master the law exonerates him and prevents recovery (1) whenever the workmen's negligence contributed to the accident; (2) when the accident is chargeable to the risks of employment or "trade risks" supposedly assumed; (3) or when the injury is caused by the negligence of a fellow workman.

This attempt to summarize the common law principles of course gives no hint of the refinements, modifications and exceptions in their application so familiar to everybody concerned, but it will answer the present purpose.

These rules were developed by the courts when the business of the world was in its infancy. By entirely natural and logical processes the law now in force and applied to modern business conditions was developed from the rules governing the relations between the individual master and one or more servants; but with the growth of business from small beginnings employing few workmen to the great industrial enterprises of today, employing thousands and tens of thousands of workmen, the real relations of the so-called master and servant have undergone a complete change and the legal rules which worked out satisfactorily when applied in a former generation are said to produce gross injustice when applied today.

The first change came in the establishment of employer's liability acts, so called, which, speaking broadly, effected no change in the principals of the common law of negligence but in some respects enlarged the obligations of the employer, and took away or modified some of his defences in a suit by an injured workman for damages. Now another radical and revolutionary change is being urged not only by the workmen and their representatives, but by many humane employers who believe that the old system works injustice under modern conditions. Out of this feeling is being developed the workmen's compensation acts.

Under the present rules of law the liability for an industrial accident is based solely on the common law negligence of the employer. In some states the common law is reinforced by statute. In the absence of such negligence the injured workman or his dependents in case of death receive nothing. Now let us examine for a moment the situation under the present system.

A conservative estimate of the number of workmen killed or maimed in this country every year in industrial accidents is about 500,000. It is said that the total number killed and wounded in the Union army during the Civil War was 385,325. In other words, the whole Confederate army was unable to kill and cripple as many Union men in five years as are now killed and crippled in industrial employment in a single year.*

In *Johnson* v. *Southern Pacific Co.*, 196 U. S., p. 1 the court say:

> "It is a reproach to our civilization that any class of American workmen should in the pursuit of a necessary and useful vocation be subject to a peril of life and limb as great as that of a soldier in time of war."

INDICTMENT AGAINST PRESENT SYSTEM

The indictment against the present system as inadequate, economically wasteful and unjust is severe and appears to be sustained. The following are some of the principal counts:

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*The accuracy of these figures is seriously questioned, but they are the best obtainable.

(1) But small proportion of workmen accidentally injured get substantial compensation. This fact seems conclusively established by the reports of the various state commissions appointed to investigate the subject. (See Report N. Y. Commission, 1910, pp. 20-29.)

(2) The system is economically wasteful and costly not only to employers, but to the state and of comparatively small benefit to the victims of accidents.

> The report of the commission to the New York legislature in March, 1910, seems to establish this proposition beyond controversy. Some significant tables of figures are reported, which seem to show that of the gross premiums received by the liability insurance companies from New York business in three years, the total amount actually paid to injured employees was 36+%, but I am assured upon reliable authority that the foregoing figures were incomplete and that upon completed tables covering ten years' experience, the amount paid to the injured workmen was about 55% of the gross premium.
>
> This is only one item of the enormous economic waste. It does not include the workmen's legal expenses, much of which is carried on for contingent fees, amounting to from 30 to 50% of the amounts recovered.

(3) Another objection to the present system is the delay incident to its operations and the withholding of the benefits during the time when most needed.

There is abundant evidence on this point, but to the judges and active members of the bar no confirmation of this alleged fact is needed.

(4) The uncertanity of litigation in particular cases and the temptation to perjury to the end that the case may or may not get to the jury, is an objection of which no one familiar with trials of accident cases will require proof.

(5) Another and deplorable result of the present system is that it breeds antagonism and hostility between the workman and his employer. This also is too obvious to require evidence.

The Committee on Uniform Legislation of the American Bar Association, in a draft of employees' compensation code, characterized the present system in plain terms.

> "Our modern industrial conditions have outgrown the common law and statutory remedies heretofore given to employees for injuries incident to their employment and the injuries now actually received by thousands of workmen not only burden the community by converting industry into idleness, but also give rise to speculative and unscrupulous litigation which is a disgrace to our system of justice."

Also

> "It has been the satisfactory experience of more than twenty foreign countries and seems to be the unanimous opinion of those well

informed on this subject that a code should be adopted changing the basis of compensation for an employee from that of negligence or fault of the employer to that of the risk of the industry or that industrial insurance should replace the the present inadequate system."

The message of Governor Hughes January 1, 1909, is so stern and accurate an indictment against the present system that I quote it:

"I recommend that provision be made for special and expert inquiry into the question relating to employer's liability law and workmen's compensation. Our present methods are wasteful and result in injustice. Numbers of negligence cases are prosecuted on a basis which gives the attorneys a high percentage of recoveries. Only a small percentage of premiums paid for insurance against liability is devoted to the payment of loses. As a result, the workmen do not receive proper compensation and employers pay large amounts that do not reach them. There are constitutional restrictions which stand in the way of some of the remedies which have been devised in other countries, but the subject should be thoroughly examined to the end that the present waste and injustice may be corrected to the fullest extent that may be found to be at once practicable and consistent with the provisions of our fundamental law."

At a recent meeting in Boston, the Chairman of the Massachusetts Commission declared "that a system must be found that will improve the present system, because public opinion has gone far enough to realize that the present system must be stopped;" and an attorney who has during the recent summer studied the subject abroad, for a great railroad company in Massachusetts, says on this subject:

> "There is not a single word that can be said in favor of the present system. I have found no defence of it. The difficult question is, how it should be dealt with. We are living under a brutal code here."

In other words, there suddenly arises from all sides an apparently just claim that a common law system of rules which has occupied more than 300 years in building up, is ethically bad and economically unsound, should be thrown into the scrap-heap with other worn out machinery and there should be substituted a new system based on wholly different principles—principles unknown to the common or any other law until about twenty-five years ago. And yet, gentlemen of the bar, we have men about us who can not see and do not believe that the world moves.

PROPOSED SYSTEM

The new system may be briefly described as one which undertakes to change the common law principle and enlarge the workmen's compensation

for accidental injuries beyond the limits set by the common law and provide compensation to workmen injured or killed in the course of employment, according to a fixed schedule applicable in every case where the accident is not the result of the wilful negligence of the workman himself.

In other words, it attempts to put the cost of industrial accidents upon the business itself on the theory that that burden will ultimately be borne by the consumer. Instead of occasionally putting on the employer the cost of some particular accident, it is an attempt to impose upon all employers the cost of all accidents. Instead of some injured workmen receiving damages, it is proposed that all workmen shall have compensation for every accident.

It in effect provides that the safety of the workman shall be insured by the employer. Under such a law, if adopted, no employer of moderate means would dare to remain uninsured; otherwise he might be ruined by a single accident and his credit for carrying on business would at all times be questioned. On its face it leaves the employer free to insure or not as he pleases, but in practical effect it imposes upon the ordinary employer the burden of compulsory insurance. Compulsory compensation means compulsory insurance. It goes on the theory that industrial accidents are largely due to what is known as "trade risks" and provides that the workmen shall be insured just as are buildings, machinery and other essential factors in the industry.

Under all the plans here proposed, so far as I have been able to examine them, this insurance must be

paid for by the employer alone; but under some of the foreign laws it may be by joint contributions of the employer and workman or by their joint contributions with the state.

This plan of compensation disregards negligence. The mere fact that a workman is injured in the course of his employment is sufficient to entitle him under certain conditions to compensation proportional to his wages, irrespective of negligence. Every accident is attributed to a risk of the business and paid for accordingly.

FOREIGN LAWS

Germany adopted this plan in 1884. Her law makes accident insurance compulsory. Between 1884 and 1908, it became the law of twenty-five other foreign countries and is said to give satisfaction. In 1897 England enacted a law making employers liable for all accidents but limiting its application to certain hazardous occupations. In 1906, the law was extended to cover all classes of workmen in all occupations, with few minor exceptions.

The principal provisions of workmen's compensation acts in the twenty-six foreign countries, may be summarized as follows: In Great Britain, France and Belgium, the law applies to practically all kinds of employment. In other countries, only those engaged in dangerous occupations, such as manufacturing, mining, quarrying, transportation, building and engineering work and other hazardous employments receive the benefit of the law. In many countries,

only those engaged in manual labor are covered by the law, but in Great Britain, France, the British Colonies and Hungary, salaried employees stand on the same basis as those engaged in manual labor. Some countries exclude overseers and technical experts receiving over a prescribed amount.

Employers bear the entire burden in all but four countries, namely, Germany, Austria, Hungary and Luxembourg, where the workmen contribute a part of the expense. A definite compensation is fixed by law in all countries and in all except Sweden the compensation is based on wages of the workmen. In Sweden, the injured person receives a flat sum regardless of his rate of wages.

In all the foregoing laws as well as those proposed in this country, the amounts to be paid are limited to a fixed sum in each case. We may summarize by saying that the injured workman is to receive from 50 to 66 2-3 per cent. of his loss of earning capacity. By the English law, in case of death, the dependents, if paid in a lump sum instead of pension, receive a maximum of $1,459 and a minimum of $729, proportioned to wages.

IN UNITED STATES

Unknown in the United States ten years ago, almost unconsidered until within six years, this new doctrine has taken root and is rapidly spreading. Today nine state legislatures have created commissions to investigate and report.

The New York Commission appointed by Governor Hughes reported in March, 1910. Their compensation bill was passed, approved by the governor and went into effect September 1, 1910. This was the first real compensation law ever enacted in this country. The states of Minnesota, Wisconsin, Illinois, New Jersey and Ohio are awaiting reports of their respective commissions.

A commission has been appointed to investigate the subject in behalf of the federal government. During the last campaign, the enactment of compensation laws was demanded in many platforms of the two great political parties.

The Massachusetts legislature created a commission by a joint resolution approved June 7, 1910. The rapidity of this general movement is emphasized by the terms of the resolution which submitted to this commission—not the question whether there should be any legistation, but what legislation there shall be. The resolution is a mandate to report a bill. It is understood that such a bill will be soon submitted. A draft has already been given to the public. This draft extends the principle of compensation to every employer having more than five persons in his employ for three days and provides that in case of death, the employer shall pay to those wholly dependent upon the earnings a weekly payment equal to one-half the average weekly wages, but not more than $10 nor less than $4 a week for a period of 300 weeks from the date of the accident, thus providing a minimum compensation of $1,200 and a maximum of $3,000. If the employee leaves no dependents, the

employer shall pay the reasonable expense of burial and last sickness, not exceeding $200.

In case of permanent disability, the employer shall pay not less than $1,200 nor more than $3,000. In case of partial disability, the employer shall pay a weekly compensation equal to one-half the difference between the injured workman's average weekly wages before and after the accident. I am not aware that the financial results to Massachusetts industries, if this bill should pass, have been or can be estimated with any approach to accuracy.

But we should note that a remedy for admittedly existing evils in the present system is imperatively demanded and that this is the only remedy proposed.

An eminent lawyer who has recently made an expert examination of the subject voices in these words the views of those favoring the change:

> "On principle and on the weight of authority, the only remedy for the present evils is to substitute the principle of insurance, or compensation, for that of negligence. Substantially every civilized nation, white and free, except the United States has made that substitution."

THE DIFFICULTIES

While the inadequacy, economic waste and the gross injustice of our present system must be admitted, the difficulties in the way of establishing the proposed system under our constitutions are very great. That system is a foreign and compara-

tively recent invention. Its principle is comparatively unknown in this country. An understanding of the foreign laws and their workings is not yet well known here even by the most ardent advocates of the new principle. The text of the principal European laws was not available in our own tongue until about a year ago, when they were published by the Department of Commerce and Labor. It was first tried in any country twenty-five years ago. The first real experiment in this country (the New York law) went into operation less than four and one-half months ago, September 1, 1910. Impartial reports of its working are not encouraging. Many of our people never heard of it and more do not understand it. Upon careful inquiry, I am satisfied that there is no data upon which anyone can now compute the financial results to employers or the burdens upon industry by the imposition of this new system of uncertain effect and absolutely unknown cost. There is at least grave doubt whether in a practical working of the plan, the burden of cost can be thrown on the consumer.

The statistics now available show little decrease in litigation. The necessity for uniform legislation in various states is obvious, because of competitive business in the different states. New York recognizes this difficulty by making the New York law applicable only to those occupations which are non-competitive with other states.

Shall the new plan be made applicable only to workmen in so-called hazardous employments, as in the New York experiment? Shall it be applied in

every case where at least five workmen for three days are employed, as proposed by the bill to be reported to the Massachusetts legislature? Shall it be made applicable as in England to every employer of even a single servant, whether he be a farmer or householder, a manufacturer or small tradesman? These questions relating to the extent of the application of the new system have been the most discussed and vexatious problems before the various commissions.

Some of the constitutional questions growing out of the proposition are serious. Such questions have not arisen in the enactment of foreign compensation laws. In England, for example, an act of Parliament is the supreme law of the land. The other countries are not hampered or safeguarded by constitutional provisions.

Whether under our constitution the basic principle is valid, that a master can be compelled to pay compensation for injury when he is innocent of fault is at least uncertain until judicially determined. This is only one of the troublesome questions, but it is fundamental. The New York Court of Appeals, at Albany next week, January 16, will hear arguments upon the constitutional questions raised by the New York law. It is expected or hoped that an opinion will be handed down in March.

To the question, Ought the principle to be adopted here, we may unhesitatingly say yes, provided the system can be constitutionally worked out which will be fair to both workmen and employer and just to the state. But the proviso covers many difficulties.

If an act shall be adopted with rates of compensation so burdensome as to drive employers from business, the last state of both may be worse than the first. If the rates can be so fixed as to give the workmen small but certain compensation which will not destroy the industries and thereby the workman's opportunity for labor, there is humanity and abundant merit in the plan.

That this brief review of a great revolutionary change now being developed is unsatisfactory in that it takes no definite position, I freely admit; but after a somewhat careful and impartial investigation I find myself today only able to propound the problems which three months ago I expected to be able to solve

CORPORATE DEVELOPMENT

Another revolutionary development in the last twenty-five years has changed the face of the business and industrial world, and produced unforeseen conditions which many believe must be intelligently dealt with if more violent changes are to be avoided. Almost within that time business has expanded from comparatively small partnerships and individual undertakings to large industrial and transportation enterprises through the corporate form of organization.

It is unnecessary here to review the expansion and growth of corporations. This is a matter of common knowledge. Nor is it necessary to assert that the corporation has been and is absolutely indispensable to modern business enterprise. To the corporation

the American people largely owe the ability so to develop the resources of this country as to make it the most prosperous industrial nation on earth. Apart from agriculture, a large per cent. of the national wealth, including the savings of the comparatively poor, are directly or indirectly invested in corporate securities.

Taking my own state because the figures are more conveniently available, we find that 198,324 New Hampshire citizens have in our savings banks deposits of about $90,000,000; that more than one half of these deposits is invested in corporate securities and more than one third in railroad stocks and bonds. In other words, nearly one half our people have an enormous stake in corporate property, and what is true of New Hampshire is undoubtedly true of other states.

Reciting these facts to a stranger to our institutions, he would be compelled to the conclusion that our corporations are and ought to be fostered and protected with anxious solicitude by a self-interested people.

PREJUDICE AGAINST CORPORATE MANAGEMENT

But corporations are neither good nor bad. Their management, for the time, may be either. We should indulge in no delusions as to the situation. We know that the popular prejudice against many corporate managers, especially those engaged in transportation and other public service, is intense and bitter; that to the managers of many of these great corporations has been often attributed a degree of selfishness

which leads them to be regarded as public enemies instead of public benefactors; that they have been accused of exercising their vast power arbitrarily and without consideration of the public rights; that they have dominated national, state and local politics and have used the corporate treasury to debauch the electorate of states and municipalities for purely selfish ends—but I need not proceed. This is a brief and inadequate summary of the popular indictment against many prominent and well-known corporate managements. That many corporate managements have been honest, have dealt fairly with their employees and the public, and have been law observers instead of law breakers receives scant consideration. The things done by comparatively few, but very prominent managements have been so unfair, dishonest and offensive that the public does not discriminate and is thoughtlessly inclined to include all corporate managements in the same general condemnation. Honest corporate managements are thus compelled to suffer for the foolishness, greed and wrong-doings of the dishonest.

The situation may be briefly summed up. The public believes that many corporate managers, wielding vast financial and political power, have not played fair. They believe that the tremendous inequalities in the distribution of wealth and in human living conditions which characterize modern society, largely spring from abuses of corporate power by corporation managers and from the existing laws protecting private property so unfairly acquired. They believe that the power has been often used for the benefit

of the few and not for the general good. They believe that the abuse of power has been so flagrant as to menace the government itself.

This feeling of irritation against corporate managements of the class described has grown into bitterness, anger and hatred. Between 1905 and 1908, it found expression in nearly thirty legislative acts prohibiting political contributions by corporations under severe penalties, and in a like federal statute last year. It appears in the passage of the Interstate Commerce Act with its amendments, the Sherman Act and laws supplementary thereto, and in the recent contests over rate regulations and other federal and state laws attempting to control and limit the wrongful exercise of corporate power. It also found expression in the insistent general demand for publicity of corporate acts and accounts, and in many other ways not requiring description.

That conditions are menacing is undoubted. The great hearted and far sighted head of this government forecasting the future with judicial mind, recently said that within the next two or three decades the country must decide whether our institutions and methods of civilization shall stand and that the institution of private property would have to meet a severe test, and upon the courts and lawyers behind the courts would devolve the working out of the best plan to preserve it.

It is specifically charged that the evils which threaten national disaster and menace the rights of property are the direct or indirect result of wilful, foolish or corrupt abuse of corporate power by cor-

porate managers. The belief is widely held by thinking men and freely stated that because of these abuses and the results thereof fundamental changes in our institutions are not far distant.

FRANK DISCUSSIONS ESSENTIAL

If this danger is impending, silence is not useful. A frank and free discussion of existing dangers, the causes and the remedies will insure the safest solution. The American voter has never failed to decide great issues rightly when they have been fully discussed and understood, but they *must* be discussed and they *must* be understood. In that way lies safety.

The processes of destruction have been permitted to go too far and a general reconstruction in many respects is necessary, Without it we fail. The first step is obvious. Either upon ethical grounds or from motives of enlightened self interest, the offending corporations must revise their mistaken policies and regulate their corporate conduct agreeably to modern demands. They must not only play fair but convince an irritated people that they will continue to play fair.

In this course they will find great difficulty. They will be opposed by the demagogue, who will taunt them with their past sins and declare them incapable of right doing. They will be noisily obstructed by the shallow political agitators who fear the loss of the potitical issue on which they hoped to thrive. They will be secretly antagonized by those of their

own household who are too blind to see that changed methods are imperatively demanded.

But for such opposition they will find compensation in the support of the great majority of our people who are right minded and desire to promote legitimate reform unaccompanied by business disaster.

THE RADICAL AND REACTIONARY

The attitude of the extreme radical and reactionary may be expressed in homely phrase. The former would burn down all the barns with their contents as the only way to get rid of the rats. The latter would insist that the rats be let alone because they have been in possession a long time. But setting aside the extreme radical and reactionary forces, the great mass of the American people who have never failed in common sense, at a crisis, will find a way to get rid of the rats and preserve the barn. The conservative voter who rightfully demands a correction of known abuses but who wishes to preserve and not destroy may well say to the extreme radical and reactionary of today, "A plague o' both your houses."

I have undertaken a brief sketch of certain existing conditions. Out of many, I have selected only those which seemed most important and pressing. As members of a profession whose duty it is to serve the public interest, we are facing grave responsibilities. Reconstructive work for the general welfare is demanded.

DUTY OF LAWYERS

There has never been a time in our history when the disinterested aid of the lawyer upon public questions was more needed than it is today. The times call for an independent and fearless bar. A lawyer who because of political disfavor or the railings of the demagogues would hesitate to act for corporations in the protection of their just rights and the maintenance of their just claims is neither fearless nor independent. On the other hand, a lawyer who for a corporate retainer would sell his right to think and act independently on public questions, who would barter his political convictions or surrender his political independence, ought to be stricken from the rolls of the profession.

RELATIONS OF LAWYERS TO CORPORATIONS

The relations of lawyers to the corporations they serve, and their independence to think and act for themselves on questions affecting the public interest should be clearly defined and well understood by all. There can be little difference of opinion in the general standard of those relations, whatever may be the form of definition. The following is an attempt to define what those relations ought to be:

> While the corporation is entitled to the highest fidelity of counsel in its business affairs and in political matters where its property interests are legitimately concerned, it can not properly expect

its attorneys to give up their political convictions or surrender their political independence. If the people understood that, on political and other public questions, the utterances of a corporation attorney do not express his honest convictions independently formed but are inspired or controlled by the corporate management, his general influence as a citizen would be seriously impaired and the value of his services to the corporation and other clients greatly lessened.

The work of establishing this government on foundations so secure that it has weathered the storms of more than a century, the labor of skilful guidance from small beginnings until it has become the greatest and most powerful nation on earth rests in large degree upon the faithful and devoted service of great lawyers, whose names have become historic. Upon the profession today rests the duty of helping to preserve the structure which they builded.

The reading of the address was received with long applause.

MR. SEIDERS: Mr. President, I move that the thanks of this Bar Association be extended to General Streeter for his learned, informing and illuminating address.

THE PRESIDENT: All those in favor of this motion will manifest it by rising.

It was a unanimous vote.

THE PRESIDENT: The next matter to be considered is the report of the committe on law reform.

MR. LIBBY: Mr. President, by reference to the order of exercises you will notice that two matters were referred to the committee on law reform on which to report. First, the oath of admission to the Bar recommended by the American Bar Association and which accompanied the canons of eithics which have heretofore been adopted by this association as by many other state and county organizations throughout the country. In connection with that, in the same year was referred also the matter of legislation relating to expert evidence based on a bill drafted by the Chief Justice of this State. Those two matters are presented in this first report.

REPORT OF COMMITTEE ON LAW REFORM

To the Maine State Bar Association:

Your Committee on Law Reform, to whom was referred at the last meeting of this Association in 1909 two matters;

First: The matter of a uniform oath of admission to the Bar, recommended by the American Bar Association in connection with the Canons of Professional Ethics, heretofore adopted by this Association.

Second: The matter of the Bill relating to expert testimony prepared by Chief Justice Emery.

As regards the first matter the Committee are of the opinion that there is no essential matter covered by the oath recommended by the American Bar Association which is not covered by the oath now prescribed in Section 30, Chapter 81, of the Revised Statutes of Maine, and while much may be said in favor of uniformity in all essential matters relating to the legal profession throughout the country, in view of the strong sentiment which your Committee has found to exist in the Bar of this State in favor of retaining our present form of oath, the Committee report that it is not expedient to make the change, and adopt the oath recommended by the American Bar Association.

As regards the second matter, a reference to the discussion on the bill relating to expert testimony to be found in the last Report of this Association, on Pages 66 to 80, inclusive, discloses the fact that the bill relating to this subject, drawn by Chief Justice Emery, has been presented and has failed of favorable action in both the Legislatures of 1907 and 1909, notwithstanding the bill considered by the Judiciary Committee was narrowed so as to confine its operation to medical experts alone. I may state that the Chairman of your Committee on Law Reform was present at both of these hearings before the Judiciary Committee, and while favoring the bill, in view of the opposition from members of the Committee and other lawyers present, assented to an amendment of the bill confining its operation to medical experts; but notwithstanding this change an unfavorable report was made by the Judiciary Committee, which was accepted by the Legislature. At the last hearing on the bill, as redrafted by the Chief Justice, strong opposition to its adoption was made by members of the medical profession, who were represented by a large and influential committee. The Judiciary Committee again made an unfavorable report which was accepted by the Legislature. In view of the unfavorable action of two Legislatures after a full hearing and discussion, and of the information as to the attitude of the Bar of this State which members of the Committee have obtained by conversation with prominent lawyers throughout the State, your Committee is of the opinion that neither the legal nor medical profession is prepared to accept the terms of the original

or amended bill as drawn by Chief Justice Emery. While some members of the Committee believe that a remedy ought to be found for the recognized evils which attach to medical expert testimony in the courts at the present time, all the members of the Committee feel constrained to report that there is little prospect of the adoption of the bill prepared by the Chief Justice, and that it is not expedient to present the bill again to the Legislature.

Respectfully submitted,

December 1, 1910

CHARLES F. LIBBY,
JOHN A. MORRILL,
E. C. RYDER,
L. T. CARLETON,
E. N. MERRILL.
Committee on Law Reform.

On motion of Mr. Bradbury the report was accepted as read.

MR. LIBBY: The other matters are matters which were recommended in the address of President Baker in 1907.

To the Maine State Bar Association:

The Committee on Law Reform of the Maine State Bar Association, who were instructed at the meeting held February 13th, 1907, to take into consideration the recommendations in the President's address as to changes and reform in legal procedure, begs leave to report that the recommendations in President Baker's address covered four matters.

First. Giving the right of exception to the refusal of the Court to direct a verdict in favor of the defendant at the end of the plaintiff's testimony, or, on the motion of either party, at the close of the whole testimony.

Second. Giving the Law Court the power to order final judgment instead of a new trial if in the opinion of the Court on the whole case the party in whose favor judgment is rendered is entitled to it.

These two recommendations are based on the practice in New Hampshire and possibly other states.

Third. After the decision of the Law Court in any case has been filed, thirty days shall elapse after filing and notice to counsel in the case before the decision shall go into effect, during which time either party may file a petition for re-argument, stating reasons for the same.

Fourth. The adoption of a rule of court by which evidence can be reported in the narrative form.

Your Committee have had several sessions to consider these matters and herewith report a bill covering the first three recommendations, but are of the opinion that it is not expedient that testimony should be reported in the narrative form.

Respectfully submitted,

December 1, 1910

CHARLES F. LIBBY,
JOHN A. MORRILL,
E. C. RYDER,
L. T. CARLETON,
E. N. MERRILL.
Committee on Law Reform.

The reasons which led President Baker to make these recommendations are set forth at length in his annual address. The matters which perhaps would not be so clearly present to the mind are the ones which relate to the second item giving the law court the power to order judgment instead of ordering a new trial if upon the whole case as reported it is apparent to the law court that the plaintiff is not entitled to recover on all the facts. On page 88 of President Baker's address he calls attention to a decision of the New Hampshire court. He says:

"The line of legal reasoning on which the New Hampshire practice rests is simple, and would seem sufficient. If, when the evidence ends, whether at the close, or at the end of the plaintiff's testimony, it is found, as matter of law, that there is no legal evidence sufficient to sustain a verdict for the plaintiff, then counsel for the defendant moves that a verdict be directed in the defendant's favor, and if this motion is denied, he takes his exception to the ruling of law, and if the Law Court on final argument decides that this motion should have been granted, it simply sustains the exception and at the same time makes good the doing of what should have been done below by ordering final judgment for the defendant.

"In *Ordway* vs. *Railroad*, before cited, the New Hampshire Court thus answers any objection that the practice adopted would be an encroachment on the constitutional right of jury trial. It says:

"'Nor' (in giving the effect to this method of procedure) 'when the facts would not authorize the jury

to find a verdict for the plaintiff, or if the court would set it aside if so found as contrary to evidence, is there to be apprehended any danger of encroachment upon the plaintiff's rights, or abridgment of the prerogatives of the jury. Whether a verdict or nonsuit be ordered, no right of the plaintiff is taken from him, if his rights be regarded in their just extent. He cannot rightfully claim a verdict from the jury if he fails to produce evidence which will legally sustain it, and it is only when he does so fail that he is precluded from submitting his case to their consciences; nor is there any violation of the salutary rule (which is nowhere given a more extensive application than in this jurisdiction,) that to questions of law the judges are to respond, and to questions of fact, the jury, because it is purely a question of law whether, upon a given state of facts, the plaintiff is entitled to recover.' "

The bill which we have reported is as follows:

AN ACT RELATING TO COURT PROCEDURE

Be it enacted by the people of the State of Maine as follows:

Section I. In any civil case, the defendant's counsel may, at the close of the plaintiff's testimony, or either party may, at the close of the whole case move that the court direct a verdict in favor of the moving party. The ruling of the court upon this motion shall be subject to exception by either party. If the motion is overruled, the trial shall continue.

Section II. In all cases, upon the determination of the questions arising upon a bill of exceptions, agreed statement or reported case, such order may be made or final judgment rendered at the law term as the case requires.

Section III. Within five days after the decision of the Law Court has been filed in any case, notice shall be given by the clerk of courts to counsel of both parties, and thirty days shall elapse after such decision is filed before the same shall go into effect, during which period either party may file a petition with the Chief Justice for reargument stating reasons for same. If the Chief Justice shall deem the matter of sufficient importance to justify a reargument, he shall notify the clerk of the law court to hold the decision in abeyance and appoint a time for oral reargument, or he may order written briefs to be filed within a period to be fixed by him. Not more than one reargument shall be allowed. Pending the final decision in such case no attachment therein shall be affected, and all attachments shall remain in full force until the expiration of thirty days after final judgment in the cause, but this provision shall not restrict the duration of attachments as otherwise provided by law.

President Baker cited a case where by some misapprehension of the law court the controlling principle had not been reached, and on their attention being called to it they finally reversed their decision. I think that in that case it was not reached. He seemed to think that other cases of a like nature might arise

and that there ought to be thirty days, after the decision had been reached and had become known to counsel, for them to file a petition for reargument if they deemed any serious error had occurred.

I don't know that any other explanations are needed so far as this report is concerned.

JUDGE TURNER: I would like to inquire of Mr. Libby if it is the intention, as it seems to be, if the Chief Justice orders an oral argument that that will preclude the filing of briefs?

MR. LIBBY: I don't know that we intended it to preclude the filing of a brief with the oral argument at the same time but that he might prefer that a brief should be filed with no oral argument. I suppose as a memorandum with the argument the court would be glad to have a brief.

JUDGE TURNER: I suppose if it was a question of law and the court were to review it extensively that they would prefer to have written arguments, although this section seems to leave it entirely in the discretion of the Chief Justice whether there shall be a reargument, and secondly whether it shall be an oral reargument or whether the argument shall be by written brief filed; and my inquiry is whether it might not be well to have this so worded as to permit the filing of written arguments in case the Chief Justice should order the case to be reargued orally.

MR. LIBBY: I think we intended, as the act states, that the decision should rest with the Chief Justice whether there should be a reargument, and

that it was for him also to determine whether he preferred an oral argument or by brief. Now whether if there was an oral argument there would be any objection to filing a brief at the same time, we did not consider. I should not suppose that it would be a matter that would require any specific direction. The court may well say to counsel that they would be very glad to have them file a brief with their written argument. I don't know whether that answers your specific inquiry.

JUDGE TURNER: Yes; but when counsel get to arguing questions of law they sometimes get to be very earnest, and if the court should order the filing of written arguments one side might answer that there is no authority for doing it. My inquiry is whether it would not be wise to so word this section that the Chief Justice might have express authority to order written arguments along with the oral.

MR. LIBBY: The committee has no objection to any amendment of course which will make more clear the purpose of the act; and if it is thought that the filing of a brief would not be allowed if the case was argued orally, why a word or two would easily make that clear.

MR. HEATH: Mr. President, these three propositions seem to be independent and some gentlemen present might favor one and be opposed to others possibly or we may all go together on the matter; but they are so independent that I would move that the sections be taken up in their order and voted upon separately.

MR. LIBBY: We have with us to-day a gentleman from New Hampshire to whom we have listened so attentively, and I have no doubt he could tell us whether the practice in New Hampshire, referring to the third matter, has been satisfactory to the bar — giving the law court the power to order judgment instead of sending the case back.

MR. STREETER: Mr. President, I may say that we should regard it an unheard-of injustice and an inequitable procedure now if we had any other practice. Perhaps I cannot give so strong an argument in its favor because we have always had it, or have had it for a great many years, and the question has never been raised; but I think it would be raised pretty quickly if, when you really got to the end of a case, if then by a technical rule you have got to send that case down and have it go through the superior court again I think we should regard it as a very inequitable piece of business.

THE PRESIDENT: The question before the Association is on the motion of Mr. Heath that the three matters arising under and recommended by and found in the draft of the act reported by the committee be taken up separately.

The motion was agreed to.

THE PRESIDENT: The secretary has received from Judge Putnam a letter about these matters which I think the Association would be glad to hear read.

The secretary read the following letter:

the evidence should state clearly the grounds on which it is offered, and the party objecting should clearly state the grounds of his objections; of course, in each case briefly and without argument, that is, no argument goes into the record. This practice has saved a great many new trials.

Truly yours,

W. L. PUTNAM.

THE PRESIDENT: We have now before us the first recommendation of the committee, found in section one of the draft of the act reported by them: "In any civil case, the defendant's counsel may, at the close of the plantiff's testimony, or either party may, at the close of the whole case, move that the court direct a verdict in favor of the moving party. The ruling of the court upon this motion shall be subject to exception by either party. If the motion is overruled, the trial shall continue."

MR. MOORE: Mr. President, it struck me on reading that report that it was doing something just contrary to what we are seeking for, and that is to have speed in the determination of causes. It seems to me this would have a tendency to delay, giving a separate ground for exception.

MR. LIBBY: It does not stay the trial, if the court refuses it the case goes along, and finally when it is carried to the law court this motion and the ruling and the exception on it go up with the rest of the case. I do not see how it can have the effect to prolong the trial of the case, and

Mr. President, I move that this first recommendation of the committee, involved in the first section of the proposed act, be adopted.

The motion was agreed to.

THE PRESIDENT: The next recommendation of the committee is involved in section two: "In all cases, upon the determination of the questions arising upon a bill of exceptions, agreed statement or reported case, such order may be made or final judgment rendered at the law term as the case requires."

MR. HEATH: I would like to have that more fully explained by the committee. I don't understand it.

MR. LIBBY: I understand that this does not compel the court to enter judgment, it simply permits it. If the circumstances are such that the court has before it fully all matters bearing upon the point on which the case turns and the court is of the opinion that the plantiff's case, for instance, cannot support his verdict, if he is not entitled to a verdict under that evidence, then it allows them, if it will dispose of the entire case, to order judgment on the other side. You will notice that there are three classes of cases, on exceptions, on report, and agreed statement. Now of course that could not happen on exceptions unless it was the vital point in the case. Then of course they would have to carry up the evidence on that point. Otherwise, if it was

one of many points, the case should be sent back for re-trial. If I understand the practice it is only in that class of cases where you can on the merits make a finality of the case; you don't prolong it by sending it down to the trial court again. Am I right, General Streeter?

MR. STREETER: Entirely correct.

MR. HEATH: I understand it to be this, as far as the agreed statement is concerned, that it adds nothing to the law, does it? The court can do that now. When we go up on an agreed statement now, of course the court renders judgment unless there is some stipulation otherwise. I cannot see why this adds anything to the law. But do I understand, if a man goes to the law court with a verdict, and the other side have carried it up on a bill of exceptions, that the court can then order a judgment that would be contrary to that verdict and that finding of facts?

MR. LIBBY: If the exception is of that character that controls the case and it shows that the plantiff is not entitled to hold his judgment, then they can dispose of the case aright, as I understand it. And that has been the practice, General Streeter tells us, for I don't know how many generations in New Hampshire, and works entirely satisfactorily to the bar. Of course it is the option of the law court to dispose of the case. President Baker spoke of one case that came back four times, was re-tried four times, and finally on the fifth trial the presiding judge ordered judgment for the defendant; and that put an end to it.

MR. HEATH: I think I know something about that case, and the law court was wrong four times.

(Laughter.)

MR. LIBBY: I don't know anything about it, but the peculiar point is that the trial judge finally put an end to the whole thing. The law court allowed a re-trial.

MR. HEATH: I may say that I was incidentally in that case. If the members of the bar should want a really full opinion in regard to that case they would have to consult Judge Spear because that was his case. On the third trial Judge Spear thought it would add a little more respectability to the case if he were a witness. That is a case where the law court was wrong the first time, and when their wrong was pointed out to them they stood by their wrong the second time, and stood by their wrong the third time, and in the face of a strong dissenting opinion by Judge Whitehouse they stood up for it the fourth time. The jury was right every time and the law court was wrong every time.

MR. LIBBY: The law court finally yielded the fifth time?

MR. HEATH: Oh, no.

MR. LIBBY: Didn't they carry it up on the direction of the verdict, the last time?

MR. HEATH: Yes, but the jury had to take the verdict that was framed for them the fourth time. The jury was right three times and was compelled to be right the fourth time by order of the court. That would be more technically accurate.

My mind is very much like that of Brother Bisbee at one time. I remember at one time I was reading the report of the committee on resolutions of the state convention that declared in favor of the direct primary system. Brother Bisbee, chairman of the committee, said, "Well, Herbert, you talk well, you make it kind of plausible, but damn these new things; I don't like them." (Laughter.) I must admit that I have a little of that feeling here, and I don't believe that the people of this state will take kindly to the proposition that gives the law court of Maine power, after a verdict by a jury, then upon a question presented by a bill of exceptions to order final judgment in a case. Now that may be excessive conservatism on my part, it may be undue prejudice, I may be all wrong, it may have worked well in other states, but aside from my sympathy with Brother Bisbee's ideas that I don't like these new things so well as I did when I was younger, I don't believe the people of this state will endorse it. I submit that consideration for you to consider, whether it will meet with popular approval. I think we have had a most magnificent appeal made to us by my friend General Streeter, whose friendship I have been honored with for a great many years, holding us up to our duty to the people as well as to the bar. Let us think of what the people of this state think of giving to this court such enormous power.

MR. LIBBY: It does not seem to me, Brother Heath, that the court is exercising any more power than it is when it determines that the evidence does not support a verdict, taking all the evidence that the plantiff has offered, giving it all its due weight. Of course they won't do this on a fragmentary case unless it really controls the entire case. Whatever the exceptions carry up, those exceptions must be of that character that they control the case; otherwise, send it back for a new trial.

MR. HEATH: You don't expand your section to to cover it; there is too much power under it. If you have got a case of that character it never ought to have gone to a jury, and where the jury never ought to have rendered a verdict you get within the close rule of law we have now. When we have finished a case, if the court is of the opinion that no sufficient amount of reasonable inferences could be drawn by reasonable men to warrant a verdict, it is the duty of the court today to order a verdict. There is no need of any new law about that. This section goes further than that. If a case of that character goes to the law court we expect the court to order judgment, we expect a nisi prius judge to order a verdict in a case like that; but you haven't qualified or limited or narrowed your section down to cases like that. You are undertaking here to enlarge the powers of the court and to give the court power to do precisely the thing I stated in my suggestion. The presiding judge has thought that a case was sufficiently doubtful so that some reasonable men upon that jury could draw

inferences to support a verdict and he has allowed the case to go to the jury and the jury has brought in a verdict. Now there is a question of law raised. You go to the law court and we are up against this proposition, that all the facts are to be reviewed by the law court and those six men up there think that it is not a proper case for the plaintiff or the defendant as the case may be, and as that section is drawn it is an attempt to confer on them a power to be judge and jury and the whole thing. I don't believe, gentlemen, that the people of this state will endorse such a proposition.

MR. LIBBY: Will you permit me to call attention a little further to some comments by President Baker? He says:

"I have had an impression that the exercise of this power by the Law Court of New Hampshire was based in part, or in whole, upon statutes.

"In order to verify this impression, I have written to one of the leading lawyers of New Hampshire and find that the New Hampshire practice rests but slightly, if at all, upon statute, but has been evolved by the court itself as the logical and necessary result of common law conclusions.

"Such it seems is the understanding of the New Hampshire Bar, and this understanding would appear to receive the sanction of the court from the reasoning applied in the case of *Ordway* vs. *Railroad Company*, 69 N. H. 429, where the opinion was rendered by the late Chief Justice Blodgett. * * *

"The only statute in New Hampshire which seems to bear upon the subject, as I am advised, is the following, found in Public Statutes of New Hampshire, Chap. 204, sec. 15:

" 'Upon the determination of the questions arising upon a bill of exceptions or case reserved, such judgment shall be rendered or order made at the law term as the case requires; and if judgment has been rendered in the case it may be vacated as if rendered by mistake, and such further proceedings may be had therein as to law and justice appertain.' "

The statute we have offered to you is practically the statute of New Hampshire. Now he says further:

"At the same time the New Hampshire Court, in its discretion, may and does direct a new trial by the jury if it deems that justice so requires."

So it does not follow where in a certain class of cases they may do certain things that they will deem that justice requires it to be done.

MR. HEATH: You are conferring a power on them, and the fact that they may order a new trial does not change the proposition that you are giving them the power to do the thing.

MR. LIBBY: If they are correct about it that this grows out of the common law power and is only slightly based on the statute, it would seem that it is simply making an end of litigation where the whole facts of the case show that the party who has got the verdict is not entitled to hold it.

MR. HEATH: With reference to its being a common law power I would like the secretary to read so much of Judge Putnam's letter as relates to the constitutional question.

The Secretary read as follows:

With reference to the right of the Law Court to order final judgment instead of a new trial: The practice in Pennsylvania permits it, it being in that respect very much like the practice of the old Exchequer Chamber. The constitution in that State, however, must be peculiar, because, as a general principle, this is not possible under the constitution of the United States or the constitution of Maine. Neither is it under the constitution of Massachusetts; but Massachusetts has made a qualified statute in reference thereto to the effect that, if one party moves that the verdict be directed in his favor, and the verdict is so directed, the Law Court, on reversing, may order a final judgment if the case supports it. This is, of course, on the theory that a party, by asking for a direction of a verdict in the face of the statute, waives any constitutional right to a jury trial.

MR. MOORE: I would like to make one statement. I was junior counsel in a case where the verdict was for the plaintiff. It went to the law court and the law court set it aside. No less a man than Judge Walton came down to hold the next nisi prius term and I heard him tell the senior counsel that there would be no trial there, that that would be non-suited. The senior counsel was not an easy man to non-suit and he said no, there would be a trial. Judge Walton said. "We will non-suit." His attention was drawn to the

record, and instead of a non-suit Judge Walton said that the decision of the law court was wrong and ordered a verdict for the plaintiff. Now, if the power had been given to the law court the plaintiff would have lost his case and the judgment would have been rendered for the defendant.

THE PRESIDENT: The question is on the adoption of the second recommendation of the committee, giving the law court the power to order final judgment instead of a new trial if in the opinion of the court on the whole case the party in whose favor judgment is rendered is entitled to it.

The motion was lost.

THE PRESIDENT: The third recommendation of the committee is now before the association, that after the decision of the law court in any case has been filed, thirty days shall elapse after filing and notice to counsel in the case before the decision shall go into effect, during which time either party may file a petition for reargument, stating reasons for the same.

MR. LIBBY: Mr. President, I move that the association adopt the third recommendation of the committee in reference to reargument.

JUDGE TURNER: Mr. President, I offer this amendment, that after the words "within a period to be fixed by him," the following words be added, "In case of oral reargument either party may file a written brief within such time as the Chief Justice may order."

MR. LIBBY: The committee has no objection to that amendment.

The amendment was adopted.

The recommendation as amended was then adopted.

MR. HEATH: What are the reasons for section three in Maine? Why do we need it? What reasons led the committee to make the recommendation?

MR. LIBBY: President Baker in his address referred to a case in his own experience, the Bigelow case, and he argued that to prevent injustice resulting from the decision immediately taking effect before counsel had a chance to see it, thirty days' time ought to be given in which they can ask for a reargument if they believe a mistake had been made. He based it upon his own professional experience and he states the reason for it. The committee thought it would do no harm and that it might avoid a possible injustice.

MR. HEATH: Mr. President, perhaps I am the only person present who may vote against that but I would like the opportunity to do so. The case that Mr. Baker referred to was a case that went from Somerset. It was reported in the books, *Bigelow* vs. *Bigelow*. Now in the late eighties I think it was Judge Wiswell drew the opinion. I was not in the case but was familiar with it. Judge Wiswell drew the opinion and based his opinion upon a very strange inadvertent misapprehension of the doctrine prevailing in this state and the decision was a piece of injus-

tice, was manifestly wrong. The only harm that was done was that they had to go back to the law court the second time. When the case came back to the court — you will find it in the next report or the next but one after that — and I happen to know in a personal way, that with that splendid generosity that made him such a man he asked permission of the law court to draw the second opinion and manfully reversed himself, and no injustice was done about it. Of course the law court make mistakes. We all make them. No doubt we can all look back to decisions where if we had argued the cases on the one side or the other a little better, or if the court had been a little more thoughtful perhaps, the errors would not have crept in. But is this proposition adapted to our practice? We are clinging in the State of Maine on the law side of the court to an antiquated method of practice, and we decline as a bar constantly to accommodate the law practice to the equity practice. The equity court is always open of course while the law side of the court is only open during the short terms and for such little incidental work as is given to law judges in vacation. We have a cast-iron, uncomfortable system of terms of law court work.

Now to illustrate the use of this law here. After the middle of February a litigant in Kennebec county must bring his action, because of the fact that we won't keep the law side of the court open — he must bring his action returnable at the October term, 1911. The case is tried, and with the natural delays incident to the work of printing it is impossible to get

the case to the December law term under your cast-iron procedure and it must go over to the next June term at Bangor or Portland. The case is then argued before six judges, and the court take the briefs and they go from judge to judge with all the liability of mistakes that would be incident to any human being. Well, now, we know if a case should be argued in June 1911 it would be very fortunate if you got a decision by the next winter. As a rule if we get a decision inside of six months, in the early part of 1912, that litigant is fortunate. Now that man has been in court more than a year looking for justice. In case this proposed bill becomes a law the decision is held up for thirty days. Then application is made for a reargument. If an oral argument is ordered it would be at the next term in 1912. Even if it is a matter of briefs you cannot expect that cause to be reviewed again by those six judges before they assemble at the next June term, and another opinion is to be drawn and sent down, and that has got to go the rounds of the court. With the method of terms that we have I believe this proposed bill adds simply another year to litigation. Well, now, it is in the minds of every lawyer here that the duty of the bar and of ourselves is to simplify the procedure and to lessen the time that business men have to suffer under today; and we lawyers know that the result of the delays of the law today, to say nothing of the constantly growing expense of taking these questions to the law court, is with a great many litigants an absolute denial of justice. Now you add to it another year. I think, gentlemen, that the reform work of

this bar association ought to be along other lines, and it ought to be along the line of cheapening litigation and of simplifying the procedure and of quickening the processes of courts instead of putting into the hands of ingenious men on the one side or the other another weapon to prolong litigation and to add to its expense. I don't know as that will impress any other gentleman here present but unless after discussion I can be shown that I am wrong I would like the privilege as one to vote against it.

MR. LIBBY: Will you bear with me a little further? The eloquent voice of President Baker is stilled in death. These were matters which he considered of a great deal of importance. They were considered of enough importance by the association to refer them to this committee. Now I want to read, reproduce as nearly as I can, a few remarks that he made on this last point. I did not read all that he made on the one you have seen fit to reject; but I do think it would be well to consider under all the conditions what he did say on this point. He says:

"The second thing, which I also discovered as one usually does, by personal experience,—in the United States Court, after a final decision is rendered by the Court of Appeals, whatever that may be, that decision, although fresh from the pen of the Bench, must be held in abeyance for a certain specific time—I believe under the United States practice it is thirty days—

during which time it is open to counsel on either side who may feel aggrieved by the decision to reconsider and reverse its own finding.

"Now of course in the ordinary case that is absolutely useless, because, after the Court has maturely considered the case and reached the result which it desired to reach, it would abide by that result. It is not for the ordinary case but for the extraordinary case that that ambulatory decision is provided, because in some cases the Court may have inadvertently fallen into error. It may be an error of law, even of fundamental law, and such an error as when brought to the attention of the Court will at once and necessarily be rectified, and the result reversed or modified. The same practice prevails in many of the states. To my knowledge, it does in New Hampshire, and I have the impression it does in Massachusetts.

"Now I have this case in mind, where a decision had been rendered by the Law Court, a verdict had been obtained favorable to my client in the Court below after a very extended jury trial. The case was taken to the Law Court by the opposing party on motion, and under the motion, no exceptions having been taken to the law,—at the Law Court the point was sought to be made that the verdict should not stand because the law would not warrant it, notwithstanding the facts proved at the trial, and assuming that they would have warranted the verdict as a matter of fact. The Law Court kept that case under advisement for I think about three years, and when it decided, sustained all the various legal

contentions upon which the verdict was based except one, and that was the fundamental proposition of the whole case, and was based, as I had conceived, on practically a legal axiom, on a proposition so inherently simple and nondebatable that it was necessarily law. The Law Court, however, took the opposite view and said that the law was to the contrary, and as a result ordered a new trial.

"Now the question which the Law Court had thus passed upon was either obviously right as a matter of law, or obviously wrong. It was an elementary proposition, and I discovered, while it seemed to me that the law was necessarily wrong, elementarily wrong,—I discovered that there was no possible way by which I could ask the Law Court to reconsider its own decision and submit for their consideration that, in our judgment, there had been an inadvertent mistake of law made.

"And what was the result? The result was that the only method found possible was to retry the whole case. In point of fact, we succeeded in making an arrangement by which the evidence, the printed record of the evidence, should be taken as having been put in over again, thus avoiding the expense of all the witnesses being summoned again, and I made the same point as I had before in regard to the law. Of course the presiding justice over-ruled the point under the decision of the full court, as he was bound to do, and I asked an exception again and carried the case to the Law Court again on the same identical point; and after the fullest argument, and the fullest citation of authorities in that case, the

Law Court of the state reversed its decision. And the late Chief Justice of the state, who had drawn the original opinion, which had been published in the books meanwhile, himself, and voluntarily, as I was informed by some of the associates upon the Bench, took upon himself the onus of drawing the reversing opinion, stating with a magnanimity of mind that stamped his greatness not only as a lawyer but as a man, that he had been largely responsible for the original inadvertence of the Court, for its original error, and he would draw the opinion frankly stating that fact, and the two opinions are now in the books."

Now here is a proposition which meets an extraordinary case and follows a practice which is the practice of the federal court and some of the state courts to prevent the unnecessary expenditure of money in seeking a just result in a law suit. Isn't it better to postpone the taking effect of a decision and give an opportunity to correct such an error as President Baker referred to rather than to continue with the result such as he sets forth involving the entire re-trial of a case? The committee has no feeling about this matter, no pride of opinion about it. It is simply a question in their judgment as to what is the best practice to work justice, to prevent injustice; and unnecessary expense is injustice.

THE PRESIDENT: The motion to adopt the third recommendation of the committee was declared carried as amended. There is no motion before the association.

MR. HEATH: Mr. President, I move to reconsider the vote whereby the association voted to adopt the third recommendation of the committee involving the reargument proposition under consideration.

The motion was agreed to.

MR. HEATH: I would like to say a word about Chief Justice Wiswell's connection with that case for I think he has been left in a position as if he had made a pure inadvertence. The real truth of that proposition is that in the first opinion that Chief Justice Wiswell drew, as to the law of consideration, he was simply in error as to the law in Maine. It was an error so far as the law of Maine was concerned in reference to some elementary principles of the doctrine of consideration, but in the Harvard Law School the law was taught as Judge Wiswell laid it down; so I think it may be misleading in our discussion here to speak of it as a gross inadvertence. A great many lawyers would have done the same thing, would have given the same opinion. It relates to an elementary principle that has to do with the doctrine of consideration on which Maine is in one position and the Harvard Law School is in another.

Now while it is true that there may be extraordinary cases that this proposed bill would reach, my objection is that while it would reach the extraordinary cases it opens a door for the cases that are not extraordinary where men want to harass the other side. The practice in the federal court is no argument. Federal courts are open all the time. Our law court

only meets three times a year. I don't know but that I feel unduly sensitive about it for I am carrying on some litigation now with some men in Boston where they are using weapons like these, weapons of delay; I have whipped them nine times and haven't got them whipped yet. It seems to me that this proposed measure gives the man with money the opportunity to harass another for another year.

The question being on the adoption of the third recommendation of the committee a vote was taken and the chair stated that he was in doubt as to the result. A rising vote was then taken and the recommendation was adopted by a vote of 12 to 10.

THE PRESIDENT: There is one other thing involved in the report. The committee report against the proposed change of rules providing for the reporting of testimony in the narrative form. Is it the pleasure of the association that the report be accepted in that respect?

It was agreed to.

THE PRESIDENT: Is it the pleasure of the association to appoint a committee to present to the legislature the two recommendations of the committee that have been adopted by the association?

Mr. Moore reported the following nominations for officers of the association for the ensuing year:

OFFICERS OF THE ASSOCIATION

President.

O. F. Fellows,	- - -	Bangor.

Vice-Presidents.

George C. Wing,	- - -	Auburn.
Frederick H. Appleton,	- -	Bangor.
C. F. Johnson,	- - -	Waterville.

Secretary and Treasurer.

Norman L. Bassett,	- -	Augusta.

Executive Committee.

W. H. Newell,	- - -	Lewiston.
Chas. S. Cook,	- - -	Portland.
Hugh R. Chaplin,	- -	Bangor.
John W. Manson,	- - -	Pittsfield.
Jos. E. Moore,	- - -	Thomaston.

Committee on Membership.

Reuel W. Smith,	- - -	Auburn.
Beecher Putnam,	- - -	Houlton.
Morrill N. Drew,	- - -	Portland.

Cyrus N. Blanchard, - -	Wilton.
B. E. Tracy, - - - -	Winter Harbor.
J. H. Montgomery, - -	Camden.
Joseph Williamson, - -	Augusta.
Emerson Hilton, - - -	Wiscasset.
A. E. Herrick, - - -	Bethel.
M. Laughlin, - - -	Bangor.
Frank E. Guernsey, - -	Dover.
W. T. Hall, Jr., - - -	Bath.
C. O. Small, - - - -	Madison.
R. F. Dunton, - - -	Belfast.
Frederick Bogue, - - -	E. Machias.
George A. Goodwin, - -	Springvale.

Committee on Law Reform.

Charles F. Libby, - - -	Portland.
John A. Morrill, - - -	Auburn.
E. C. Ryder, - - -	Bangor.
Leroy T. Carleton, - - -	Winthrop.
E. N. Merrill, - - -	Skowhegan.

Committee on Legal History.

J. L. Reade, - - -	Lewiston.
Ira G. Hersey, - - -	Houlton.
Robert T. Whitehouse, - -	Portland.
N. P. Noble, - - -	Phillips.
Sumner P. Mills, - - -	Stonington.
Norman L. Bassett, - -	Augusta.
Arthur S. Littlefield, - -	Rockland.
Everett Farrington, - -	Waldodoro.
Ralph T. Parker, - - -	Rumford Falls.

*Charles Hamlin, - - -	Bangor.
Henry Hudson. - - -	Guilford.
Jos. M. Trott, - - -	Bath.
Forrest Goodwin, - - -	Skowhegan.
Ellery Bowden, - - -	Winterport.
L. H. Newcomb, - - -	Eastport.
Fred J. Allen, - - -	Sanford.

Committee on Legal Education.

Tascus Atwood, - - -	Auburn.
R. W. Shaw, - - -	Houlton.
Benjamin Thompson, - -	Portland.
N. P. Noble, - - - -	Phillips.
H. E. Hamlin, - - -	Ellsworth.
Frank G. Farrington, - -	Augusta.
Reuel Robinson, - - -	Camden.
Emerson Hilton, - - -	Damariscotta.
A. S. Kimball, - - -	Norway.
Bertram L. Smith, - - -	Patten.
W. E. Parsons, - - -	Foxcroft.
Charles D. Newell, - - -	Richmond.
George G. Weeks, - - -	Fairfield.
Wm. P. Thompson, - -	Belfast.
George A. Curran, - - -	Calais.
Willis T. Emmons, - -	Saco.

*Died May 15, 1911.

JUDGE TURNER: Mr. President, I move that the secretary of the association be instructed to cast a vote for the association for the election of the officers reported by the committee.

The motion was agreed to, and the President declared the officers elected whose names had been read.

THE PRESIDENT: There is one other matter before the association. At the annual meeting of 1909, article seven was laid upon the table and is still upon the table, to see what action the association will take in reference to establishing a system of superior courts. * * * Is there any action to be taken in reference to that?

MR. MONTGOMERY: Mr. President, in connection with that article but not with it especially in mind the Knox county bar at a recent meeting took action, and the action they took is in the form of a resolution which I wish to read to the association:

"Resolved, That the interests of the people and that of the bar of this state demands a change in the judicial system of our state be made during the coming session of the Legislature so that all controversies between party and party arising by appeal, or by exceptions, or otherwise, should be passed upon and determined by a separate and distinct court or tribunal other than the tribunal from which the appeal or exceptions are taken."

A committee after that resolution was passed was appointed and it was expected to present this resolution to the State Bar Association at their annual meeting, and it was expected at that time that our venerable president of the Knox county bar would make a statement in relation to it. He was unable to attend, and by request of the committee it has devolved upon me. I wish he could have done it. He probably would have presented it particularly, in written form exactly with all particulars. With the brief time that I have had I could not very well do that. And perhaps I should have chosen to present it right to you, briefly.

Now that resolution is in line with the very argument that was presented here by the able address this afternoon. It is a movement of the thought of the people and the bar of the state, a "world movement," you might call it, in the state. And what has given rise to it? It is just as we have heard argued here to-day, delays, the law's delays. Further than that it is a separation of the trial judge from the law court and the possibilities of his influence in the judgment that they might render. Now that is the feeling of the Knox county bar unanimously expressed in this resolution. And the delay is manifest to me in the present holding of the courts in Knox county and in Waldo. The justices holding those courts came immediately from the law term held in this city. After the argument of many cases, and cases that should employ them at once, they have been forced to go out and hold terms of court and may hold them clear up to May and delay their opinions.

There are many other reasons that need not be stated to men who have actual experience as every one of us have here that the system is somehow wrong. How wrong? To determine it only requires a very brief review of the history of the judiciary of this state. It started under the constitution with a supreme court and such other courts as the legislature might establish. Such other courts. Not inferior courts, but such other courts. And when it started it started with a supreme court, the court of appeals, the court of sessions, and justices of the peace. And those continued. The supreme court was supreme not only in the law but in the trial of cases. The court of appeals was limited. And it went on until 1839 I think and then it was found that the system was inadequate and the district courts were established, the state divided up into districts and district courts established and the common session court was made the county commissioners' court. The district court had enlarged jurisdiction over the court of common pleas and appeals were made to the supreme court, exceptions were to the supreme court, sitting as a trial court in many cases, but it was found that that was inadequate; and in 1852 the judges of the district court with one exception were placed upon the supreme court. There had been one court added to the supreme court making four, and those three made seven, and the district courts were abolished and the trial of causes then was committed to the supreme court, and the decisions of the law. Now there was no change in the courts until 1868 I think. At that time the county of Cumberland had found

that it was inadequate, that there were law's delays, that they could not get their cases as they should have them before the courts, and that county started its present superior court. In 1878 Kennebec did likewise, enlarging the jurisdiction of its superior court over Cumberland. Both of them have enlarged I think from that time until they have two superior courts that go directly to the supreme court with their exceptions and with their motions, and they find them to be very adequate and complete so far as they are concerned; and under the constitution there is no reason why they should not have concurrent jurisdiction with the supreme court in the trial of causes and be made full and equal and relieve the supreme court entirely, or almost so, from the trial of causes. And what has been the growth? What added things have been made to the supreme court that makes the law's delays. With only one judge added to make eight, since it was established in 1852 there have been added four counties, for one thing, with ten or twelve additional terms of court to be held, the counties of Knox, Sagadahoc, Androscoggin and Aroostook. Now that is an added burden to the supreme court that should have been relieved. And further than that, see how many additional laws have been passed. The entire corporation laws of the state have developed since that time. The prohibitory law with all its ramifications has been added. It may be repealed under the present condition of affairs.

(A voice:) That will help some.

MR. MONTGOMERY (continuing:) And further than that, when the present judiciary was established in 1852 there were only eight articles in equity to be considered by the supreme court. Now there are twelve, with an additional one in some respects making thirteen; and we all know how the growth of equity has enlarged the duties of the supreme court. I haven't got to argue it as minutely as I should have to argue it to a jury or anything of that kind because your own minds take in at once the enormous increase of the powers and duties of the supreme court making it absolutely necessary apparently that something should be done to relieve it, and give the people and the attorneys and every one relief under our judicial system and under that section of the constitution which says: "Every person, for an injury done him in his person, reputation, property, or immunities, shall have remedy by due course of law; and right and justice shall be administered freely and without sale, completely and without denial, promptly and without delay."

Now, with this condition, who should take it in hand? Every one here feels at once that the legal fraternity are a part of the judiciary of this state, and not only a part of the judiciary but a very strong part of the citizenship of the state, and that they receive a license from the state and an encouragement from the state to do everything that is possible to make the laws familiar to the people and make them such as that constitutional provision provides. To do it is above any remuneration that we can possibly receive because it is establishing justice in our state

and upon the earth. It is marching in the right direction. It is not a reflection upon the present court; it is a kindness to them to do it.

How to get at it, is the next thing. Under the constitution that I have referred to that the judiciary should consist of a supreme court "and such other courts," and with the example that we have in Cumberland and Kennebec counties it would seem highly possible to form superior courts that would meet the requirements. They may be limited to begin with, and grow, as these superior courts in Cumberland and Kennebec have grown and will grow hereafter. This resolution says that they would like to bring it before this legislature. Now if I have made myself clear and there is sympathy in this association with the cause that they have espoused in Knox county, I hope that we shall be able to take up and get at some action in relation to it. I move the passage of the resolution.

THE PRESIDENT: Mr. Montgomery of Camden presents this resolution framed by the Knox bar and he moves the passage of that resolution by this association.

MR. LIBBY: Mr. President, I hesitate somewhat to speak further, I have occupied the floor so much at this meeting, but before voting on anything of this important character it seems to me that we should realize how radical a measure may be involved, how much thought and consideration should be given to it. The question is, as I understand it, on the

adoption of this resolution which commits us to certain things. It commits us, if I understand it right, first, to a purely law court; second, that the changes shall be presented at this session of the legislature.

Now I have been through, in the history of this organization, an attempt to establish a different system of courts than this now prevailing. I think the secretary, who has looked into the records of the association, has found that for two years we were occupied over that subject; and finally we found such a difference of opinion that nothing came of it Is it possible that we are prepared now to agree upon and recommend to the legislature a radical change in the organization of our courts? I certainly have tried to work it out in my own mind and I have not succeeded very well, and it seems to me at this late hour it would be hardly possible to bring us to an agreement on a better system of courts than this under which we are now practicing. I sincerely hope that nothing hasty will be done here, that we will not commit ourselves to propositions which we have not thoroughly considered; and it does seem to me that under the present situation we are not prepared to unite upon any particular system. It may be there is a better one than that we practice under, but we have wrestled with the subject before and nothing came of it whatever. We have wrestled with the subject in a fragmentary way with reference to a system of superior courts.

Let me speak a moment of the situation in my own county, the largest county in the state. We

have there an auxiliary court known as the superior court. It does a great deal of the work that used to be done by the supreme court, and yet there are certain subjects which it does not touch, equity and divorce and real actions. We are so well satisfied with our court that we don't care to have it disturbed. We should oppose it with all the strength that we could exert, simply because it meets the needs of the bar and of the county. And it is at work all the time. We did not take kindly to the suggestion of a system of ambulatory superior courts, because you get used to a condition of things, you get used to a judge of your own selection, and you don't care to have your local court constantly changed by a system of ambulatory judges. I only speak of this as indicating the sentiment in our own bar which is the largest bar by far in the state. They voted upon this matter, they voted upon it two years ago when I think it was brought up for discussion before the judiciary committee; and now we are asked to vote upon something that commits ourselves to we don't know exactly what, except that there shall be an independent law court which shall give its whole time to the consideration of law questions. Now I submit, in the interests of the court, in the interests of the bar of the state, that we ought not to commit ourselves absolutely to a proposition which comes before us at a late hour at this annual meeting. If you really mean to take this up seriously a committee should be appointed of the wisest men at the bar, those perhaps of large experience who are acquainted with the situation in different parts of the state, to study

and present a system if they can for action by us, say at the next annual meeting, but to commit ourselves to any proposition which radically changes the organization of our court at the present time it seems to me is unwise; and I move that this resolution lie upon the table.

MR. MONTGOMERY: Mr. President, I feel it a duty to reply briefly to Brother Libby because I think he has fears that are not only groundless but which would retard everything if they prevailed. Now he acknowledges that their court in Cumberland is very desirable, and that in a way disconnects the supreme court from the trial of cases by giving exceptions and motions right to the law court, the supreme court as a law court; and he very wisely — and perhaps it might be the way he talks is selfish — claims that is a wise and a good court and just what they want down there. Now that resolution would not disturb his court a particle, but it would have the tendency to give to the rest of the state the same good thing. They want to get rid, he says, of ambulatory courts. We have ambulatory courts now, in a certain way, because we may have any justice of the supreme court sent from their places to come down and hold our courts; and go into different parts of the state and hold courts; and I will tell you that the way they have been appointed, selected as they are—and they are able men, I would not say otherwise—but selected as they are it makes us almost strangers in the different counties. And the objections to the ambulatory part of it is increased by the very fact that the bunching

of the appointments in the several places, as they have, makes them strangers to the rest of the state and the counties. Well, now, this court in Cumberland need not be disturbed, nobody wants to disturb that court there, we all believe it is a good thing. Neither in adopting this are we bound by the special terms of it.

MR. LIBBY: Do I understand your resolution that it calls for an independent law court?

MR. MONTGOMERY: Certainly.

MR. LIBBY: Then it must disarrange the whole judiciary.

MR. MONTGOMERY: Not necessarily, if we have superior courts.

MR. LIBBY: I don't want to commit ourselves to that proposition unless we have considered it with that care which its importance demands; and it seems to me that we haven't today the opportunity. I am not opposing your having a superior court, or any county having a superior court; I am simply stating to you the situation in my own county and why we do not care to have it disturbed. Now I cannot see how you can establish an independent law court without disturbing the situation down in Cumberland as much as in any other county.

MR. MONTGOMERY: It has been established to a certain extent in your own county, a separate law court.

MR. LIBBY: Where is it?

MR. MONTGOMERY: You have exceptions from your superior court to the supreme court.

MR. LIBBY: But we do not disturb the organization of the law court. The very theory of our superior court is that it is concurrent in certain departments of law, and of course it must carry direct to the law court. You don't want more than one trial court, do you? You go from the trial court to the law court. Any auxiliary court must work in that way.

MR. MOORE: Why not have superior courts all over the state. Then the supreme court would be a law court, wouldn't it?

MR. LIBBY: Do you mean simply a law court?

MR. MONTGOMERY: Not necessarily. This resolution would only go as far as the committee would be pleased to have it go.

MR. OAKES: I would call attention to the fact that the subject has already been before the association substantially, not in the form of this resolution

but in the way of appointing a committee to represent the bar association before the legislative committee in the matter of obtaining a general system of superior courts, and a bill was drafted and presented to the judiciary committee of which the president, I think, was a member at the time; and the matter not coming up until near the end of the session, while I think that the views of the committee generally favored action in a comprehensive way for a system of superior courts, it was blocked at the last part of the session on account of a sudden objection from I think Penobscot county, joining perhaps with Cumberland county, which naturally was very well satisfied with its present court, and very properly too, I think. Now it seems to me that without following, as has been suggested, the terms of this resolution, this association might very properly repeat its action and have the matter presented in some form by a representative committee of the association to the legistature by a draft of some kind of a bill which would seem wise; and then the legislature would have to decide upon it.

MR HEATH: Haven't we drifted from the resolution? The resolution asks that we recommend the establishment of an independent law court made up of men who would not do nisi prius work. Now the discussion has drifted entirely away from that and we are talking now about the propriety of establishing a system of superior courts. If that resolution is passed aren't we committed to this proposition, an appellate court, a new court made up

of new men whose sole powers would be on questions of law and have the powers of a law court and who would never sit in nisi prius work? If we recommend that, what becomes of the present supreme judicial court? You have on your hands eight judges and none of them can be legislated out of office. They will all have to sit and serve until they retire or resign or serve out their terms. Wouldn't we have this state of affairs: We will have under that resolution, as it is drawn, a new law court made up of new appointees who would have the present powers of the law court. We would have a supreme judicial court, we would have on our hands the present eight judges who would of course have equity powers and our nisi prius powers on the law side of the court. The supreme judicial court is a constitutional tribunal. Your resolution says that it shall be made up of men who shall not sit and do nisi prius work.

MR. MOORE: They might be three of the present judges.

MR. HEATH: Yes, but you would reduce your supreme judicial court, in that event. Then three of the present judges would be made a law court. You would still have, then, five judges in making up your supreme court. Now I suggest this amendment. Mr. Libby moves that the resolution lie on the table. Wouldn't Mr. Montgomery accept an amendment that the motion should be that it lie on the table without prejudice so we should not be

committed one way or the other, and that would leave the Knox bar an opportunity to go before the committee without a vote for them or against them. There are only twenty-five or thirty of us here, there are almost a thousand lawyers in the state, the matter has had no discussion. Wouldn't that be the fair thing?

MR. MONTGOMERY: Almost anything would seem fair that Brother Heath would propose, but I think his fears go beyond what we intend or is intended by that resolution. It is not to destroy the present court or break it up but to establish it in a way as they have in Portland and Kennebec, as a law court. If you give superior courts concurrent jurisdiction it leaves the trial courts, the supreme court, just as it is now, if people want to bring their actions before it, and they will do it until the thing has grown and established itself. Perhaps it would be better to leave it as it is and have them concurrent and let them grow as the superior courts in Cumberland and Kennebec have grown.

MR. HEATH: I am in sympathy with extending the superior court system. I think we ought to have more of them.

MR. MONTGOMERY: Of course it is an important question and perhaps it is stated there in broad language and proposes apparently a radical change, but a proper committee of this association might formulate right off something that would be

in harmony with it and a good thing for the state. I was in hopes that the resolution would be adopted in a certain way, with modifications if you wanted them, and a committee appointed to see what could be done. We don't legislate, we can only appoint a committee, and if the committee act, or see fit not to act, it does no harm. When they do act, it will go as far as it will before the legislature. That would be my view of it, if that could be put in some way to meet the feelings of the association, could be adopted in some way, and then a committee appointed.

MR. SMITH: Mr. President, I would like to make a suggestion which will perhaps solve this difficulty. Suppose a resolution be referred to a committee of this bar association without recommendation one way or the other to consider and report either upon the direct provisions of that resolution or in any other manner that they may see fit as to a change in the judicial system.

MR. MONTGOMERY: I think that a wise suggestion.

THE SECRETARY: Thinking there might be a discussion of this matter I made an investigation as to former action of this association. This question was taken up in 1892 and 1893. You may be interested to know what the association did and that a resolution was passed by this association at that time in favor of the establishment of a distinct appellate court. I found the following:

February 17, 1892, the first annual meeting of the Maine State Bar Association was held.

The standing committee on Law Reform consisted of five members, Charles F. Libby, Wallace H. White, Jasper Hutchings, Herbert M. Heath, Charles E. Littlefield.

A special committee of ten was appointed to act with the standing committee on Law Reform and this joint committee was requested to consider the expediency of changing the judicial system of the state. The special committee consisted of Joseph B. Peaks, John A. Morrill, A. A. Strout, W. H. Fogler, F. H. Appleton, Frank M. Higgins, E. N. Merrill, W. P. Thompson, F. A. Powers, and L. C. Cornish.

December 21, 1892 a special meeting of the Bar Association was held to consider the report of the general and special committees on Law Reform.

The committee reported three bills, two of which relating to suits at law and in equity and to exceptions and stenographers were with amendments unanimously adopted and recommended to the legislature for passage. The bill relating to the supreme judicial court and to abolish the superior courts was laid upon the table until the annual meeting and the secretary instructed to print and send to each member of the association a copy of the bill of the committee and also of any other bills on the same subject that might be forwarded to him.

On January 20, 1893, the secretary sent a printed report to each member of the association which set forth three bills, offered respectively by the committee, by L. T. Carleton and by Josiah H. Crosby.

All of the bills abolished the superior courts in Aroostook, Cumberland and Kennebec counties and in their places provided for the following additional nisi prius terms; one in Aroostook in June; the committee and Crosby bills, three criminal only in Cumberland in February, May and September and three criminal only in Kennebec in January, June and September; the Carleton bill, two civil and criminal in Kennebec in April and September and two in Cumberland, a criminal term in January and a civil term in November.

The bills also provided for three terms of the Law Court, at Bangor in June, at Portland in July, at Augusta in December.

But the bills differed fundamentally in these respects. The Committee Bill reduced the number of justices of the supreme court as vacancies occurred by death, resignation or termination of term to five, who should alone sit in the Law Court and should also sit at nisi prius. The bill created five circuit court judges, two upon the passage of the act and remainder as vacancies occurred among the justices of the supreme court; the circuit judges to hold under the direction of the Chief Justice nisi prius terms and with power in vacation to do what any justice of the supreme court could do.

The committee in offering this bill reported that it was thought best to diminish the number of law judges but not to divorce them entirely from nisi prius work and to have changes made so as to interrupt as little as possible the existing order of things; that the appointment of circuit judges to

perform nisi prius work would maintain the number of judges then on the bench and at the same time furnish an opportunity to judge of their fitness for promotion as law judges.

The Carleton bill increased the number of the supreme court to ten.

The Crosby bill increased the number of judges to ten but divided them into two divisions, the first to consist of the Chief Justice ex-officio and four other justices to be known as law justices having sole jurisdiction of all matters then cognizable by the law court; the second division to be known as nisi prius justices to discharge all duties discharged by the justices of the supreme court at nisi prius.

At the annual meeting on February 8, 1893, the bills were discussed. Mr. Josiah H. Drummond protested against the abolition of the superior court in Cumberland County. Mr. Josiah H. Crosby spoke in favor of his bill, being of the opinion that the law court should be severed completely from nisi prius work and the two courts made as independent as possible. He discussed the system in other states. Mr. Drummond stated that the proposed legislation had once been the law of the state and was repealed, one reason for the repeal being its unconstitutionality; that a supreme judge was a supreme judge and a distinction could not be made in their duties so as to make out of them two courts; he concurred in the desire that the supreme court be the law court only but in his judgment the only way to bring this about so that the people could stand it would be to reduce the judges to five and have a separate supreme court.

Mr. Crosby stated in reply that in 1855 there were seven judges and a law was passed making four of them judges in the law court but giving them the same nisi prius jurisdiction as before, while the other three judges had nisi prius jurisdiction only and there was therefore not a complete separation as in his bill; he did not understand it had been held unconstitutional. Mr. Drummond replied that Judge Cutting always held it unconstitutional, that he helped to repeal the law and took the ground of its unconstitutionality.

Mr. Libby called attention to the fact that the committee bill made the additional judges separate and they were called circuit judges. After the motion to postpone to the next annual meeting had been discussed Mr. H. M. Heath suggested that the association recommend to the legislature the appointment of a commission of three or five by the Governor to consider the matter and report to the next legislature.

After discussion the following resolutions were adopted.

Resolved that it is the sense of this association that there should be a distinct law court established in this state at the earliest possible moment.

Resolved that the president and secretary in behalf of the bar association request the legislature to create a commission of five members to inquire into the expediency of revising the judicial system of the

state, their report to be filed with the Governor and Council by January 1, 1894.

Subsequent reports do not show that anything further was done with the matter.

I have been informed that one of the main points considered was whether it was best to have a distinct appellate court and have no nisi prius work done by any of the judges composing it, and although the resolution was passed in favor of establishing a separate court, after further consideration and discussion it was found that the bar preferred to have nisi prius work done by the judges.

MR. MONTGOMERY: I would ask the secretary if that was decided by the bar association or by the committee that was appointed?

THE SECRETARY: It was reported to the bar association, and the resolution I have read was the resolution of the association in 1893.

THE PRESIDENT: The pending question is the motion that this resolution be referred to a committee without recommendation by the association.

JUDGE TURNER: I second the motion.

MR. LIBBY: I do not wish to obstruct any fair consideration of this question and I will withdraw my motion to lay upon the table.

MR. BRADBURY: As Mr. Smith's motion is now before the association I wish to state so we may act intelligently, if I have a correct idea of it, that the committee appointed to take the matter under consideration would logically report at the next regular meeting of this bar association. Now in order to expedite Mr. Montgomery's idea and bring the matter fairly before the association I would move an amendment, that this committee to be appointed shall have the discretion to take such action as the committee deems advisable at the present session of the legislature.

MR. LIBBY: Do I understand you to mean that they go right ahead without further consultation with the association and recommend to the legislature?

MR. BRADBURY: That is the tenor of the amendment, and I make it in order to bring the whole subject before the present body.

MR. LIBBY: I hope that that amendment will not prevail. I think all the objections which I have suggested as bearing upon committing ourselves to the idea suggested in this resolution exist in still greater degree in this proposed amendment — bottling ourselves up in a committee, telling a committee to go ahead and do what they please at this present session of the legislature. Can it be that it is wise in a matter of so grave importance as this is which may radically change our judicial system?

MR. MONTGOMERY: I can see how the motion of Brother Smith as Brother Bradbury wishes to amend it would be productive of very much good. If the committee decided to bring a bill before the legislature, then it would open up an opportunity before the judiciary of course, a hearing and discussion would be had that would not only be educational but would be of vast benefit to the state as an educational matter and perhaps settle the whole thing. It looks wise to me, and it has developed as I hoped it would after hearing the resolution.

MR. HEATH: I would make a suggestion, that the committee appointed broaden out the terms of that resolution so as to take up the whole question of judiciary re-organization. The resolution commits us to the creation of a court of appeals. I have heard lawyers raise the question that the legislature had no power to create a court like that to send down mandates to the supreme judicial court, that a court like that must be made up of members of that court itself. That is one of the difficulties of the situation. I will move that the entire question of re-organization of the court be referred to a committee of five to be appointed by the chair to consider the matter and report at a special meeting of this association to be held on the second Wednesday of February, and that a copy of their report be sent seven days in advance by the secretary to the members of this association, together with a notice of the adjourned meeting.

MR. MONTGOMERY: I think that is a wise suggestion; I will consent to that motion.

The motion was agreed to.

THE SECRETARY: One other matter. I have a letter which I will read:

COMPARATIVE LAW BUREAU
OF
THE AMERICAN BAR ASSOCIATION

Philadelphia, Pa., January 3, 1911.

Hon. Charles F. Libby,
Portland, Maine.

My dear Mr. Libby:

I understand that the Maine Bar Association will meet at Augusta on January 11th and I most earnestly want the Association to become a member of this Bureau under Class B. The regulations provide for $15.00 annual dues which will entitle the Association to ten copies of the Annual Bulletin, but upon payment in addition thereto of $10.00 per each one hundred members in good standing the Annual Bulletin will be sent direct to each and every one of those members from a list to be supplied to me by your Secretary.

It seems to me that the Maine Bar ought to stand by this work which is growing every year, as we believe, to the profit and advancement of the profession generally as well as the country at large.

The following State Bar Associations are already members: New York, Pennsylvania, Virginia, Kentucky, Minnesota and Tennessee.

I am also writing a similar letter to Judge Levi Turner of your City, who, I am sure, will do all he can to push the work along.

With kind personal regards and in the hope that you may have a bright and prosperous new year, I am,

Cordially yours,

WM. W. SMITHERS.

JUDGE TURNER: It is now six o'clock and I presume the most of the members are desirous of getting to the hotel. If you desire it I would be entirely willing to explain the objects and purposes of this bureau, but on account of the lateness of the hour, inasmuch as it does not involve a very large expenditure of money it would seem wise for this association to become a member of that bureau, and it might wisely be left to the discretion of the president and secretary and treasurer and some other member constituting a special committee. If the members present prefer to have some information of what this means and of the objects and purposes of it I would be entirely willing to give it.

MR. LIBBY: I move that the gentleman have an opportunity to explain the purposes of this department.

JUDGE TURNER: Briefly, this bureau of comparative law is an adjunct or auxiliary of the American Bar Association. The officers of it consist of some of the most eminent legal scholars in the country. The director is Simeon E. Baldwin, the secretary William W. Smithers and upon the board of managers formerly James Barr Ames and there are now Edgar H. Farrar, the present President of the American Bar Association, William Draper Lewis of Philadelphia and John H. Wigmore of Chicago. The headquarters are at Philadelphia, Pennsylvania. It was organized I think in 1909 and the purposes of it are briefly stated in the organic law of the bureau or association. The objects and purposes as there stated are:

1. The publication of an annual Bulletin, containing the titles of legislative enactments of foreign governments and reviews of foreign law books and periodicals published during the preceding twelve months.

2. The translation into English and publication of foreign fundamantal laws.

3. The translation into English of particular foreign laws and the preparation by specialists of legal opinions upon questions that might arise thereon.

4. The holding of an annual conference to discuss comparative law generally, and to provide more thorough means by which foreign laws can become available to American Lawyers.

5. The prosecution of special lines of research in foreign legislation, and the preparation of English translations thereof for the benefit of American lawyers and students.

6. To create and maintain a list of correspondence at home and abroad representing high legal attainments respecting every considerable nation and every system of laws.

7. To gather materials and information so thoroughly as to afford real aid to practicing lawyers, teachers and students upon the subject of jurisprudence generally; including the widest practicable bibliography.

Now at first blush it may seem that these matters which are furnished by the annual bulletin—and I have with me two copies of this bulletin, the original, the first copy, number one, issued in 1908 and the

last one issued in July 1910—may seem to be rather foreign and remote to the actual necessities of a practicing lawyer, but as was indicated by the address to which we have listened today the world is moving, and the simple quotation of authority today does not suffice to satisfy every judge. In order for a man to argue a question intelligently and comprehensively and effectively to a legal tribunal he must not be content simply to rely on the ipse dixit for his decision. There are large problems across the water that the people are meeting and facing just the same as we are meeting and facing them here. Their situation, their form of government, are not identical, but the problems in themselves are very similar, and the practical use and serviceability of this bulletin, which each member of this association would get at the rate of twenty-five cents each, seems to me to be a reasonable and perhaps an advantageous investment for the association to make. As I understand it our membership would cost us $15.00 for a simple membership and that would entitle us to ten bulletins, and the payment of $10.00 in addition to that would give us an extra hundred, and these are to be sent direct by the publishers of the bulletin to the members of this association.

Here are the titles of a few of the special articles that appear in the last number of the annual bulletin, published July 1, 1910, "Spanish Laws on Marriage as Compared with the French Laws," "Japanese Laws of Domestic Relations," "Naturalized Citizens, a Comparative Study." Various books were reviewed as the "Civil Code of the German Empire," "Visigothic Code," "General Theory of the Law."

Now as I said before, gentlemen, this is a class of literature that you would not cite every day, yet I believe that a perusal of these bulletins would open and broaden a man's vision and lead him into lines of study that would be useful and serviceable to him. These are the studies that "fertilize the mind." A man who sticks down to the solid dry grind of the law day after day may become a good case lawyer, he may become a safe advisor, but if he wants to be something other than that, to take in his profession in its broader aspects and its wider meaning he must go into the philosophy of the law and know something of the literature and the theory of the law and the history of the things that are behind the things he is applying in his daily life; and the only reason for our subscribing here is to help put ourselves in line and in sympathy with a worthy object, and at the same time get something that, as Solon Chase said about his paper, will be easy pleasant reading.

THE SECRETARY: Will the members of the association pardon a word from the secretary? We have now dues of one dollar per year. The records we are now publishing are very much larger than they used to be. They are complete, the proceedings in full being published. I find that the cost of living of the Bar Association is increasing from year to year just as is the cost of living outside of the association. If we vote to become a member of this bureau by the payment of fifteen dollars it will be simply a contribution of that amount for the cause it represents and as regards

the use of ten copies of the annual bulletin I do not know what ten members of the association we could select to receive them. I would not be understood to speak lightly of the work of the bureau, but I could not name ten members of the association who I could be sure would read and study the accounts of the laws of the Japanese and the Visigoths. On the other hand if we should pay enough to have each member of the association receive a bulletin it would take about $45 a year out of the treasury and while as one who believes that "the world moves" and who would like to see this association stand in the front of the various associations it seems to me that this becoming a member of the bureau is a little expensive and that we are not exactly in a position to subscribe. It would seem to me better for the association to pass a vote that it is inexpedient at the present time to become a member rather than leave the matter to a committee unless you choose to select on that committee those are of the same mind as myself and believe that we cannot afford this luxury.

THE PRESIDENT: The motion is that this be referred to a special committee.

JUDGE TURNER: I will withdraw that motion and move that we become simply a member under class B which requires a membership fee of $15.00 and entitles the association to ten copies of the bulletin, and that those bulletins be distributed among the officers of the association as far as they go.

THE SECRETARY: Please note that it is $15.00 annual dues, not $15.00 once and for all.

THE PRESIDENT: The motion is that we become a member under class B costing $15.00 and entitling us to ten copies of the bulletin. Is that the pleasure of the association?

The motion was lost.

THE PRESIDENT: The chair appoints as the committee under Mr. Montgomery's resolution the following: J. H. Montgomery, H. M. Heath, Charles F. Libby, J. O. Bradbury and B. L. Smith.

On motion of Mr. Walker the association then voted to adjourn to Wednesday, February 8, 1911 at 2.30 P. M. at the same place.

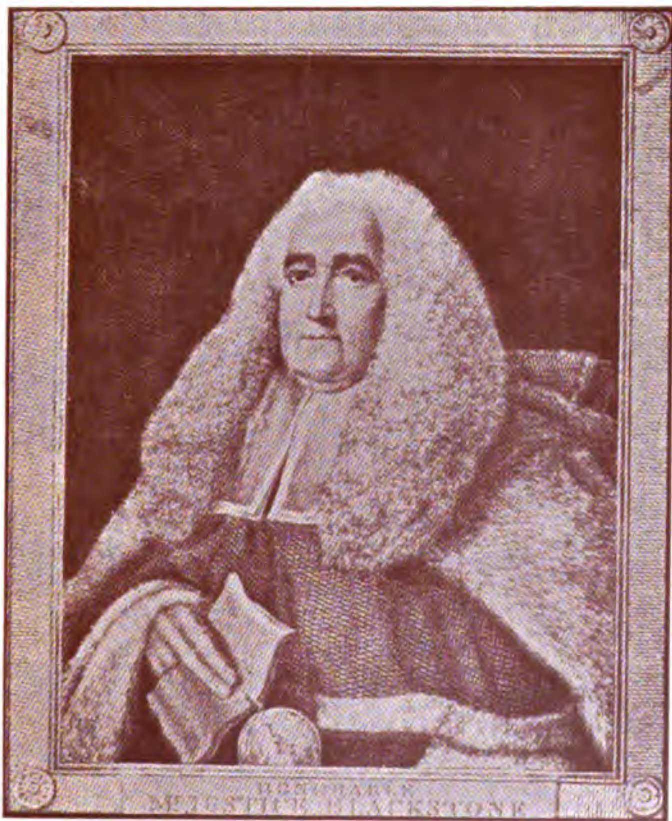
Adjourned,

A True Record,

NORMAN L. BASSETT, Secretary.

Maine State Bar Association

Dinner



Augusta House January 11, 1911

Menu

MOCK TURTLE, CLEAR

CELERY | OLIVES

BOILED HALIBUT, HOLLANDAISE
POTATO CROQUETTES

CARDINAL PUNCH

ROAST TENDERLOIN OF BEEF

MASHED POTATOES | STRINGLESS BEANS

ASPARAGUS SALAD

WALNUT ICE CREAM
ASSORTED CAKE

CRACKERS AND CHEESE

CIGARS | COFFEE | CIGARETTES

Post Prandial

L. B. DEASY, PRESIDENT

HON. CHARLES F. LIBBY, . . .	THE BAR
HON. FRANK S. STREETER,	THE NEW HAMPSHIRE BAR
MR. JUSTICE SAVAGE, . . .	THE BENCH
HON. CHARLES F. JOHNSON, .	THE STATE OF MAINE
HON. FRANK A. MOREY, . .	THE LEGISLATURE
RAYMOND FELLOWS, ESQ., .	THE YOUNG LAWYER
HON. H. M. HEATH, ...	THE EXPERT

Maine State Bar Association

ADJOURNED MEETING

Augusta, Maine, February 8, 1911.

The meeting was called to order by President Fellows.

PRESIDENT FELLOWS: The Chair will recognize Brother Montgomery in reference to the election of members.

THE SECRETARY: Mr. President, I have a short report which I would like to make with reference to those names:

To the Members of the Maine State Bar Association:

After the adjournment of the meeting of January 11, it occurred to the Secretary that if membership in the Association was brought to the personal attention of those who had been admitted to the bar during the last ten years many would be found who would wish to join. Mr. John B. Madigan, Secretary of the Board of Examiners for admission to bar with his customary courtesy had a list made up of those

admitted during the during the last ten years and to them your Secretary sent a circular letter with form for application. As a result seventy-five applications have been received and have been referred to the committee on membership.

It is apparent that if members of the Association will see to it that the attorneys in their localities who are not now members and particularly those who have been admitted in recent years are informed of the purposes of the Association many will become members. A steady increase in the size of the Association will lead to excellent results and it is to be hoped that the meetings may become annual instead of biennial.

NORMAN L. BASSETT, Secretary.

MR. MONTGOMERY: I have a list of names which are proposed for membership:

The following applicants for membership to the Maine State Bar Association are recommended by the Committee on Membership.

ANDROSCOGGIN COUNTY

	When admitted to Maine Bar
Fortunat Belleau, Lewiston,	Feb. 8, 1909
A. T. L'Heureux, Lewiston,	Feb. 22, 1902
Seth May, Auburn,	Aug. 4, 1909
George C. Webber, Auburn,	Feb. 24, 1900
Harrie L. Webber, Auburn,	Feb. 14, 1908

AROOSTOOK COUNTY

Bernard Archibald, Houlton,	Sept. 17, 1907
O. L. Farnsworth, Caribou,	Sept. 17, 1907
W. P. Hamilton, Caribou,	Aug. 28, 1908
J. A. Laliberte, Fort Kent,	Aug., 1906
John B. Madigan, Houlton,	Sept., 1885
James D. Maxwell, Island Falls,	Oct., 1908
Leonard A. Pierce, Houlton,	Sept., 1908

CUMBERLAND COUNTY

Waldo H. Bennett, Portland,	Aug., 1903
Jacob H. Berman, Portland,	Aug. 10, 1909
Philip G. Clifford, Portland,	Feb. 9, 1907
Joseph E. F. Connally, Portland,	April 8, 1902
Linwood F. Crockett, Portland,	March, 1906
Frederic J. Laughlin, Portland,	Oct. 10, 1907
Harry E. Nixon, Portland,	Feb. 8, 1909
J. Bennett Pike, Bridgton,	Dec. 4, 1902
Frank H. Purinton, Portland,	Feb. 10, 1909
Robert E. Randall, Freeport,	Aug. 26, 1903
Maurice E. Rosen, Portland,	Feb. 21, 1910
Carroll B. Skillin, Portland,	Feb., 1909
H. P. Sweetser, Portland,	April 22, 1903
Henry N. Taylor, Portland,	Aug., 1910

FRANKLIN COUNTY

Currier C. Holman, Farmington,	Sept. 28, 1909
J. Blaine Morrison, Phillips,	Aug. 21, 1908

HANCOCK COUNTY

Wiley C. Conary, Bucksport,	Oct. 10, 1906

KENNEBEC COUNTY

Charles W. Atchley, Waterville,	Aug. 20, 1907
Emery O. Beane, Hallowell,	Oct., 1907
A. Harrison Bridges, Waterville,	Sept. 19, 1906
Ernest L. McLean, Augusta,	Aug., 1907
Carroll N. Perkins, Waterville,	Aug., 1907

KNOX COUNTY

Milton W. Weymouth, Rockland,	Sept. 17, 1907

LINCOLN COUNTY

George A. Cowan, Damariscotta,	Aug. 13, 1906
James B. Perkins, Boothbay Harbor,	Aug. 17, 1909

OXFORD COUNTY

Albert J. Stearns, Norway,	May, 1897

PENOBSCOT COUNTY

Benjamin W. Blanchard, Bangor,	Aug. 17, 1904
Irving O. Bragg, Newport,	Mar. 15, 1910
Winfield S. Brown, Dexter,	Aug. 14, 1906
Charles P. Conners, Bangor,	Aug. 20, 1906
F. N. Halliday, Newport,	Feb. 10, 1909
P. H. Hasty, Dexter,	Aug. 29, 1906
Lawrence V. Jones, Bangor,	Feb. 9, 1910
John B. Merrill, Bangor,	Aug., 1904
Ulysses G. Mudgett, Bangor,	Feb. 22, 1905
Charles H. Reid, Jr., Bangor,	Aug. 11, 1903
Wm. H. Robinson, Bangor,	Nov. 26, 1902
Donald F. Snow, Bangor,	Aug. 8, 1904
George W. Thombs, Lincoln,	Oct. 14, 1903

PISCATAQUIS COUNTY

Frank W. Ball, Dover,	July 8, 1903
Leon G. C. Brown, Milo,	Aug. 8, 1905
William A. Burgess, Sangerville,	Sept. 23, 1897
Ross St. Germain, Greenville,	Sept. 20, 1910
Charles W. Hayes, Foxcroft,	Sept., 1889
George W. Howe, Milo,	Feb. 26, 1883
Frank C. Merritt, Dover,	Sept., 1910
William H. Monroe, Brownville,	Feb., 1897
Harry L. Smith, Greenville,	Aug. 29, 1900

SAGADAHOC COUNTY

John J. Keegan, Bath,	Oct. 8, 1907

SOMERSET COUNTY

T. A. Anderson, Pittsfield,	Aug. 11, 1903

WALDO COUNTY

Eben F. Littlefield, Belfast,	Apr. 19, 1907
Ralph I. Morse, Belfast,	Aug., 1905

WASHINGTON COUNTY

Herbert J. Dudley, Calais,	Oct., 1902
Oscar H. Dunbar, Jonesport,	Aug. 28, 1906
Elisha W. Pike, Eastport,	May 1, 1906

YORK COUNTY

Harold H. Bourne, Kennebunk,	Aug. 4, 1910
Elmer J. Burnham, Kittery,	Aug. 27, 1906

Arthur J. B. Cartier, Biddeford,	Aug., 1909
Louis B. Lansier, Biddeford,	May 1, 1906
Percy N. H. Lombard, Old Orchard,	Sept. 21, 1905
Joseph R. Paquin, Biddeford,	Feb. 9, 1909
Lucius B. Swett, Kittery,	Sept. 22, 1906
Hiram Willard, Sanford,	Feb., 1907

Recommended by Membership Committee,

J. H. MONTGOMERY, for Committee.

PRESIDENT FELLOWS: Is it the pleasure of the association that those whose names have been read be elected members of the association?

It was so voted.

PRESIDENT FELLOWS: The call for this meeting sent out by the secretary is as follows:

OFFICE OF SECRETARY OF
MAINE STATE BAR ASSOCIATION

Augusta, Maine, January 24, 1911

To the Members of the Maine State Bar Association:

At the annual meeting of the Association held January 6, 1909, it was voted after discussion that Article VII of the notice of the meeting, namely — "To see what action the Association will take with reference to establishing a system of superior courts" be laid upon the table.

At the annual meeting held January 11 of this year the President placed this matter before the Association and Mr. J. H. Montgomery, of Camden, thereupon presented the following resolution:

"Resolved, That the interests of the people and of the Bar of this State demand a change in the judicial system of our state be made during the coming session of the Legislature so that all controversies between party and party arising by appeal, or by exceptions, or otherwise, shall be passed upon and determined by a separate and distinct court or tribunal other than the tribunal from which the appeal or exceptions are taken."

With reference thereto the following vote was passed:

"That the whole matter of reorganization of the courts be referred to a committee of five to be appointed by the chair to consider the matter, and report at an adjournment of this meeting to be held on the second Wednesday of February next and that a copy of their report be sent seven days in advance by the secretary to the members of this association, together with a notice of the adjourned meeting."

The chair appointed upon this committee;

J. H. Montgomery, H. M. Heath, Charles F. Libby, J. O. Bradbury and B. L. Smith.

Pursuant to this vote and the vote of adjournment you are hereby notified that the adjourned meeting will be held at the Senate Chamber in Augusta on Wednesday February 8, 1911, at 2.30 P. M. The report of the committee is given below.

NORMAN L. BASSETT, Secretary.

REPORT OF SPECIAL COMMITTEE UPON REORGANIZATION OF COURTS

To the Maine State Bar Association

The committee having considered the question submitted to them, are unable to agree upon the change in the present system of the court expedient to be made, and so report.

January 19, 1911.

J. H. Montgomery
H. M. Heath
Charles F. Libby
James O. Bradbury

PRESIDENT FELLOWS: We will ask for a report from the chairman of the committee.

MR. MONTGOMERY: Mr. President, I will present our report.

The President read the report as follows:

To the Maine State Bar Association

The committee having considered the question submitted to them, are unable to agree upon the change in the present system of the court expedient to be made, and so report.
January 19, 1911

J. H. Montgomery
H. M. Heath
Charles F. Libby
James O. Bradbury

MR. LIBBY: Mr. President, I move that the report of the committee be accepted.

The motion was agreed to.

MR. LIBBY: Mr. President, I think no action was taken at the original meeting with reference to laying before the legislature so much of the bill reported by the committee on law reform as was approved by the association. I therefore move that the secretary be instructed to have that bill as approved by the association introduced into the legislature with the request that it be referred to the judiciary committee.

The motion was agreed to.

MR. LIBBY: If there is no further business, I move that the meeting now adjourn.

The motion was agreed to.

Adjourned,

A True Record,

NORMAN L. BASSETT, Secretary.

REPORT OF SECRETARY

Augusta, Maine, March 31, 1911.

To the Members of the Maine State Bar Association:

Pursuant to the instructions of the adjourned meeting of the association held February 8, 1911, the secretary presented to the legislature the following bill:

AN ACT RELATING TO COURT PROCEDURE

Be it enacted by the People of the State of Maine as follows:

Section 1. In any civil case, the defendant's counsel may, at the close of the plaintiff's testimony, or either party may, at the close of the whole case move that the court direct a verdict in favor of the moving party. The ruling of the court upon this motion shall be subject to exception by either party. If the motion is overruled, the trial shall continue.

Section 2. Within five days after the decision of the Law Court has been filed in any case, notice shall be given by the clerk of courts to counsel of both parties, and thirty days shall elapse after such decision is filed before the same shall go into effect,

during which period either party may file a petition with the Chief Justice for reargument stating reasons for same. If the Chief Justice shall deem the matter of sufficient importance to justify a reargument, he shall notify the clerk of the law court to hold the decision in abeyance and appoint a time for oral reargument, or he may order written briefs to be filed within a period to be fixed by him. In case of oral reargument either party may file a written brief within such time as the Chief Justice may order. Not more than one reargument shall be allowed. Pending the final decision in such case no attachment therein shall be affected, and all attachments shall remain in full force until the expiration of thirty days after final judgment in the cause, but this provision shall not restrict the duration of attachments as otherwise provided by law.

The bill was introduced by Joseph Williamson, Representative from Augusta, and was referred to the Committee on Judiciary. At the hearing on March 9, 1911, the secretary appeared before the committee, explained the terms of the bill and the action of the association with reference to it.

The committee subsequently reported ought not to pass and the report was accepted.

NORMAN L. BASSETT,

Secretary.

By-Laws of the

Maine State Bar Association

ARTICLE 1. MEMBERSHIP.

Members of the Bar in this State shall be eligible to membership and shall be elected at any legal meeting, upon the nomination of the committee on membership.

ARTICLE 2. OFFICERS.

The officers of this Association shall be a president, three vice-presidents, an executive committee, a committee on law reform, a committee on legal education and admission to the bar, a committee on legal history, a secretary and a treasurer. All these officers shall be elected by ballot at the annual meeting and shall hold office until others are elected and qualified in their stead.

Other standing committees than those above specified may be provided by the Association from time to time as may be found expedient.

ARTICLE 3. PRESIDENT.

The president, or in his absence one of the vice-presidents, shall preside at all meetings of the Association. The president shall be, *ex-officio*, a member of the executive committee.

ARTICLE 4. EXECUTIVE COMMITTEE.

The executive committee shall consist of four members beside the president. They shall have charge of the affairs of the Association, make arrangements for meetings, order the disbursement of the funds of the Association, audit its accounts, and have such other powers as may be conferred on them by vote at any meeting of the Association.

ARTICLE 5. COMMITTEE ON LAW REFORM.

The committee on law reform shall consist of five members. It shall be the duty of this committee to consider and report to the Association such amendments of the law as should in their opinion be adopted; also to scrutinize proposed changes of the law, and when necessary report upon the same; also to observe the practical working of the judicial system of the State and recommend by written or printed reports, from time to time, any changes therein which experience or observation may suggest.

ARTICLE 6. COMMITTEE ON LEGAL EDUCATION.

The committee on legal education shall consist of one member from each county represented in the Association. Its duty shall be to prepare and report a system of legal education and for examination and admission to the practice of the profession in this State, and report from time to time such changes in the system of examination and admission as may be deemed advisable.

ARTICLE 7. COMMITTEE ON MEMBERSHIP.

The committee on membership shall consist of one member from each county represented in the Association. All applications for membership shall be made to the member from the county where the applicant resides, if any, otherwise to any member of the committee. Applicants shall be nominated for membership by the concurrence of three members of this committee.

ARTICLE 8. COMMITTEE ON LEGAL HISTORY.

The committee on legal history shall consist of so many members as the Association shall, from year to year, appoint.

Its duty shall be to provide for the preservation in the archives of the society, of the record of such facts relating to the history of the profession as may be of interest, and of suitable written or printed memorials of the lives and characters of distinguished members of the profession.

Article 9. Secretary.

The secretary shall keep the records of the Association, have charge of its archives, and discharge such other duties as the Association may require.

Article 10. Treasurer.

The treasurer shall collect and receive the dues of the Association, keep and by order of the executive committee disburse its funds, and discharge such other duties as may pertain to his office. Any person may fill the office of both secretary and treasurer if elected thereto. A vacancy occurring in either of these offices may be filled by appointment of the executive committee.

Article 11. Meetings.

The annual meeting of the Association shall be held on the second Wednesday of January, at such place in the city of Augusta in the years in which the Legislature shall be in session, and in the alternate years at such place and time as the executive committee may determine. Special meetings may be called by the president, on application in writing of five members, ten days' notice of which by mail shall be given to each member by the secretary, stating the object of the meeting. Fifteen members shall constitute a quorum at any meeting.

ARTICLE 12. ANNUAL DUES

Amended, Feb. 14, 1894, Jan. 11, 1911.

Failure to pay any annual due within two years shall suspend the membership of the person in default. If such person shall pay at any time to the Treasurer all arrears due from him at the time of such suspension and also all intervening dues to the time of payment, he shall be re-instated in membership.

ARTICLE 13. EXPULSION OF MEMBERS.

Any member may be expelled for misconduct, professional or otherwise, by a two-thirds vote of the members present at any meeting after proper notice of the charges; and all the interest of any member in the property of the Association upon the termination of his membership, by expulsion, resignation or otherwise, shall thereupon vest absolutely in the Association.

ARTICLE 14. AMENDMENTS.

These by-laws may be amended only by a two-thirds vote of the members present at an annual meeting of the Association.

OFFICERS SINCE ORGANIZATION

Presidents

Charles F. Libby, Portland, 1891 to 1896.

Herbert M. Heath, Augusta, 1896 to 1897.

Franklin A. Wilson, Bangor, 1897 to 1898.

Charles E. Littlefield, Rockland, 1898 to 1899.

Wallace H. White, Lewiston, 1899 to 1902.

Joseph W. Symonds, Portland, 1902 to 1903.

Joseph C. Holman, Farmington, 1903 to 1904.

George D. Bisbee, Rumford Falls, 1904 to 1905.

*Orville D. Baker, Augusta, 1905 to Aug. 16, 1908.

Luere B. Deasy, Bar Harbor, 1909 to 1911.

O. F. Fellows, Bangor, 1911 to

Secretary and Treasurer

Leslie C. Cornish, Augusta, 1891 to 1907.

Norman L. Bassett, Augusta, 1907 to

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*Deceased, August 16, 1908.

Members of the

Maine State Bar Association

1910 and 1911

Androscoggin County.

Tascus Atwood, - - -	Auburn.
Fortunat Belleau, - - -	Lewiston.
D. J. Callahan, - - -	Lewiston
Seth M. Carter - - -	Auburn.
J. G. Chabot, - - -	Lewiston.
W. H. Cornforth, - -	Auburn.
Franklin M. Drew, - -	Lewiston.
S. M. Farnum, Jr., - -	Auburn.
W. H. Judkins, - - -	Lewiston.
P. H. Kelleher, - - -	Auburn.
Rogers P. Kelley, - -	Auburn.
A. T. L'Heureux, - -	Lewiston.
Jesse M. Libby, - - -	Mechanic Falls.
F. E. Ludden, - - -	Auburn.
Harry Manser, - - -	Auburn.
J. H. Maxwell, - - -	Livermore Falls
Seth May, - - - -	Auburn.
George S. McCarthy, - -	Lewiston.
D. J. McGillicuddy, - -	Lewiston.
Frank A. Morey, - - -	Lewiston.
John A. Morrill, - - -	Auburn.

Wm. H. Newell, - - -	Lewiston.
Henry W. Oakes, - - -	Auburn.
James A. Pulsifer, - - -	Auburn.
John L. Reade, - - -	Lewiston.
W. B. Skelton, - - -	Lewiston.
Reuel W. Smith, - - -	Auburn.
A. E. Verrill, - - -	Auburn.
W. H. Watson, - - -	Auburn.
George C. Webber, - -	Auburn.
Harrie L. Webber, - -	Auburn.
Wallace H. White, - -	Lewiston.
Wallace H. White, Jr., - -	Lewiston.
George C. Wing, - - -	Auburn.
George C. Wing, Jr., - -	Auburn.
George H. Winn, - -	Lewiston.

Aroostook County.

Bernard Archibald, - - -	Houlton.
James Archibald, - - -	Houlton.
Walter Cary, - - - -	Houlton.
Roland E. Clark, - . -	Houlton.
Charles F. Daggett, - -	Presque Isle.
F. G. Dunn,* - - - -	Ashland.
O. L. Farnsworth, - - -	Caribou.
Willis B. Hall, - - -	Caribou.
W. P. Hamilton, - - -	Caribou.
Ira G. Hersey, - - -	Houlton.
E. A. Holmes, - - -	Caribou.
J. A. Laliberte, - - -	Fort Kent.
Wallace R. Lumbert, - -	Caribou.
John B. Madigan, - - -	Houlton.

* Deceased.

James D. Maxwell,	- -	Island Falls.
Howard Pierce,	- - -	Fort Kent.
Leonard A. Pierce,	- -	Houlton.
Beecher Putnam,	- - -	Houlton.
H. W. Safford,	- - -	Mars Hill.
R. W. Shaw,	- - -	Houlton.
S. S. Thornton,	- - -	Houlton.

Cumberland County.

George H. Allan,	- - -	Portland.
P. P. Baxter, Jr.,	- - -	Portland.
Waldo H. Bennett,	- -	Portland.
Jacob H. Berman,	- -	Portland.
William S. Bradley,	- - -	Portland.
Wilford G. Chapman,	- -	Portland.
Frederick V. Chase,	- -	Portland.
Nathan Clifford,	- - -	Portland.
Philip G. Clifford,	-	Portland
Joseph E. F. Connally,	- -	Portland.
Charles S. Cook,	- - -	Portland.
Linwood F. Crockett,	- -	Portland.
John F. Dana,	- - -	Portland.
Liberty B. Dennett,*	- -	Portland.
Morrill N. Drew,	- - -	Portland.
Josiah H. Drummond, Jr.,	-	Portland.
Isaac W. Dyer,	- - -	Portland.
James C. Fox,	- - -	Portland.
M. P. Frank,	- - -	Portland.
Eben W. Freeman,	- - -	Portland.
E. O. Greenleaf,	- - -	Portland.
Clarence Hale,	- - -	Portland.

* Deceased.

Frederick Hale, - - -	Portland.
C. A. Hight, - - - -	Portland.
Leroy S. Hight, - - -	Portland.
Wm. M. Ingraham, - -	Portland.
Howard R. Ives, - - -	Portland.
Hiram Knowlton, - - -	Portland.
W. J. Knowlton, - - -	Portland.
Seth L. Larrabee,* - - -	Portland.
Frederic J. Laughlin, - -	Portland.
C. Thornton Libby, - -	Portland.
Charles F. Libby, - - -	Portland.
Wm. H. Looney, - - -	Portland.
John J. Lynch, - - -	Portland.
Frank H. Marshall, - - -	Portland.
Chas. P. Mattocks,* - -	Portland.
John F. A. Merrill, - -	Portland.
Carroll W. Morrill, - - -	Portland.
Augustus F. Moulton, - -	Portland.
David E. Moulton, - - -	Portland.
Harry E. Nixon, - - -	Portland.
George F. Noyes, - - -	Portland.
Irving W. Parker, - - -	Portland.
James R. Parsons, - - -	Portland.
Franklin C. Payson, - -	Portland.
B. S. Peacock, - - -	Freeport.
J. Bennett Pike, - - -	Bridgton.
Barrett Potter, - - -	Brunswick.
Frank H. Purinton, - - -	Portland
Wm. L. Putnam, - - -	Portland.
Edward M. Rand, - - -	Portland.
Robert E. Randall, - - -	Freeport.
Edward C. Reynolds, - -	Portland.

* Deceased.

F. W. Robinson,	- - -	Portland.
Maurice E. Rosen,	- - -	Portland.
J. H. Rousseau,	- - -	Brunswick.
Clarence E. Sawyer,	- -	Brunswick.
George M. Seiders,	- -	Portland.
Carroll B. Skillin,	- - -	Portland.
David W. Snow,	- - -	Portland.
H. W. Swasey,	- - -	Portland.
H. P. Sweetser,	- - -	Portland.
Joseph W. Symonds,	- -	Portland.
Henry N. Taylor,	- - -	Portland.
Benj. Thompson,	- - -	Portland.
Edward F. Tompson,	- -	Portland.
Levi Turner,*	- - - -	Portland.
H. M. Verrill,	- - -	Portland.
Harry R. Virgin,	- - -	Portland.
Augustus H. Walker,	- -	Bridgton.
John A. Waterman,	- -	Gorham.
Lindley M. Webb,	- - -	Portland.
Richard Webb,	- - -	Portland.
John Wells,	- - - -	Portland.
Edward W. Wheeler,	- -	Portland.
John S. White,	- - -	Naples.
Robert T. Whitehouse,	- -	Portland.
Virgil C. Wilson,	- - -	Portland.
Albert S. Woodman,	- -	Portland.
Edward Woodman,	- -	Portland.

Franklin County.

Harry F. Beedy,	- - -	Phillips.
Cyrus N. Blanchard,	- -	Wilton.
Frank W. Butler,	- - -	Farmington.

* Deceased.

A. F. Fenderson, - - -	Farmington.
Currier C. Holman, - -	Farmington.
Joseph C. Holman, - -	Farmington.
Sumner P. Mills, - - -	Farmington.
J. Blaine Morrison, - -	Phillips.
N. P. Noble, - - -	Phillips.
Elmer E. Richards, - -	Farmington.
Philip H. Stubbs, - - -	Strong.
F. E. Timberlake, - - -	Phillips.
Josiah H. Thompson, - -	Farmington.

Hancock County.

F. Carroll Burrill, - - -	Ellsworth.
B. E. Clark, - - - -	Bar Harbor.
Edward S. Clark, - - -	Bar Harbor.
Wiley C. Conary, - - -	Bucksport.
O. P. Cunningham, - - -	Bucksport.
L. B. Deasy, - - - -	Bar Harbor.
Geo. R. Fuller, - - -	S. W. Harbor.
L. F. Giles, - - - -	Ellsworth.
Hannibal E. Hamlin, - -	Ellsworth.
Seth W. Norwood, - - -	S. W. Harbor.
John A. Peters, - - -	Ellsworth.
E. P. Spofford, - - -	Deer Isle.
B. E. Tracy, - - - -	Winter Harbor.
Geo. M. Warren,* - - -	Castine.
Chas. H. Wood, - - -	Bar Harbor.

Kennebec County.

E. C. Ambrose, - - -	Readfield.
Charles L. Andrews, - -	Augusta.

* Deceased.

Charles W. Atchley, - -	Waterville.
George K. Bassett, - - -	Augusta.
Norman L. Bassett, - -	Augusta.
Emery O. Beane, - - -	Hallowell.
Geo. K. Boutelle, - - -	Waterville.
A. Harrison Bridges, - -	Waterville.
F. E. Brown, - - - -	Waterville.
Lewis A. Burleigh, - - -	Augusta.
Leroy T. Carleton, - - -	Winthrop.
F. W. Clair, - - - -	Waterville.
Frank L. Dutton, - - -	Augusta.
Harvey D. Eaton, - - -	Waterville.
Frank G. Farrington, - -	Augusta.
Geo. W. Field, - - -	Oakland.
W. H. Fisher, - - -	Augusta.
Dana P. Foster, - - -	Waterville.
H. E. Foster, - - -	Winthrop.
A. M. Goddard, - - -	Augusta.
Wm. T. Haines, - - -	Waterville.
Herbert M. Heath, - -	Augusta.
Geo. W. Heselton, - - -	Gardiner.
Guy A. Hildreth, - - -	Gardiner.
Melvin S. Holway, - -	Augusta.
C. F. Johnson, - - -	Waterville.
Treby Johnson, - - -	Augusta.
Charles W. Jones, - - .	Augusta.
Thomas Leigh, - - -	Augusta.
Fremont J. C. Little, - -	Augusta.
Thomas J. Lynch, - - -	Augusta.
Benedict F. Maher, - -	Augusta.
Ernest L. McLean, - - -	Augusta.
Augustus P. Norton, - -	Augusta.
Carroll N. Perkins, - - -	Waterville.

Arthur L. Perry, - - -	Gardiner.
Warren C. Philbrook, - -	Waterville.
F. K. Shaw, - - - -	Waterville.
G. T. Stevens, - - -	Augusta.
Asbury C. Stilphen, - -	Gardiner.
Samuel Titcomb, - - -	Augusta.
Henry S. Webster, - - -	Gardiner.
Joseph Williamson, - -	Augusta.

Knox County.

Alan L. Bird, - - - -	Rockland.
Edward B. Burpee, - - -	Rockland.
William T. Cobb, - - -	Rockland.
Edw. K. Gould, - - -	Rockland.
Frank H. Ingraham, - -	Rockland.
Arthur S. Littlefield, - -	Rockland.
J. H. Montgomery, - - -	Camden.
Jos. E. Moore, - - -	Thomaston.
David N. Mortland, - -	Rockland.
Reuel Robinson, - - -	Camden.
L. M. Staples, - - -	Washington
R. I. Thompson, - - -	Rockland.
Oscar H. Tripp, - - -	Rockland.
C. M. Walker, - - -	Rockland.
Frederick S. Walls, - -	Vinal Haven.
Milton W. Weymouth, - -	Rockland.

Lincoln County.

George A. Cowan, - - -	Damariscotta.
Everet Farrington, - -	Waldoboro.
Emerson Hilton, - - -	Wiscasset.
Wm. H. Hilton,* - - -	Damariscotta.
James B. Perkins, - - -	Boothbay Har.

* Deceased.

Oxford County.

George D. Bisbee, - - -	Rumford Falls.
L. W. Blanchard, - - -	Rumford Falls.
P. C. Fickett, - - - -	West Paris.
Seth W. Fife, - - -	Fryeburg.
A. E. Herrick, - - -	Bethel.
Alfred S. Kimball, - - -	Norway.
Ralph T. Parker, - - -	Rumford Falls.
Albert J. Stearns, - - -	Norway.
John P. Swasey, - - -	Canton.
Alton C. Wheeler, - - -	South Paris.
J. S. Wright, - -	South Paris.

Penobscot County.

B. C. Additon,* - - -	Bangor.
Frederick H. Appleton, -	Bangor.
Benjamin W. Blanchard, - -	Bangor.
Charles A. Bailey,* -	Bangor.
Irving O. Bragg, - - -	Newport.
Victor Brett, - - - -	Bangor.
Winfield S. Brown, - - -	Dexter.
James H. Burgess, - -	Bangor.
Hugh R. Chaplin, - - -	Bangor.
Milton S. Clifford, - - -	Bangor.
Hugo Clark. - - -	Bangor.
Charles P. Conners, - -	Bangor.
J. Willis Crosby, - - -	Dexter.
Charles J. Dunn, - - -	Orono.
O. F. Fellows, - - -	Bangor.
Raymond Fellows, - - -	Bangor.

* Deceased.

Bertram L. Fletcher, - -	Bangor.
P. H. Gillin, - - - -	Bangor.
Joseph F. Gould, - - -	Old Town.
F. N. Halliday, - - -	Newport.
Charles Hamlin,* - - -	Bangor.
P. H. Hasty, - - - -	Dexter.
Henry P Haynes, - - -	East Corinth.
Lawrence V. Jones, - -	Bangor.
Mathew Laughlin, - - -	Bangor.
Forrest J. Martin, - - -	Bangor.
John R. Mason, - - -	Bangor.
Alanson J. Merrill, - -	Bangor.
John B. Merrill, - - -	Bangor.
Henry L. Mitchell, - - -	Bangor.
Ulysses G. Mudgett, - -	Bangor.
F. H. Parkhurst, - - -	Bangor.
Wm. B. Pierce, - - -	Bangor.
T. H. B. Pierce,* - - -	Dexter.
W. H. Powell, - - -	Old Town.
Charles H. Reid, Jr., - -	Bangor.
William H. Robinson, - -	Bangor.
Allen E. Rogers, - - -	Orono.
Erastus C. Ryder, - - -	Bangor.
Clarence Scott, - - -	Old Town.
George T. Sewall,* - - -	Old Town.
Bertram L. Smith, - - -	Patten.
Donald F. Snow, - - -	Bangor.
Louis C. Stearns, Jr., - -	Bangor.
George W. Thombs, - -	Lincoln.
Peregrine White,* - - -	Bangor.
F. J. Whiting, - - -	Old Town.
Franklin A. Wilson, - -	Bangor.
John Wilson, - - -	Bangor.

* Deceased.

Piscataquis County.

Frank W. Ball, - - -	Dover.
Leon G. C. Brown, - - -	Milo.
William A. Burgess, - -	Sangerville.
M. L. Durgin, - - -	Milo.
Ross St. Germain, - - -	Greenville.
Frank E. Guernsey, - -	Dover.
Charles W. Hayes, - - -	Foxcroft.
George W. Howe, - - -	Milo.
Henry Hudson, - -	Guilford.
James H. Hudson, - - -	Guilford.
Frank C. Merritt, - - -	Dover.
William H. Monroe, - -	Brownville.
Willis E. Parsons, - - -	Foxcroft.
Alfred R. Peaks, - - -	Foxcroft.
Francis C. Peaks, - - -	Dover.
Joseph B. Peaks, - - -	Dover.
Harry L. Smith, - - -	Greenville.
John F. Sprague, - - -	Monson.

Sagadahoc County.

Arthur J. Dunton, - - -	Bath.
Sanford L. Fogg, - - -	Bath.
Wm. T. Hall, - - -	Richmond.
Wm. T. Hall. Jr., - - -	Bath.
George E. Hughes, - -	Bath.
John J. Keegan, - - -	Bath.
Charles D. Newell, - - -	Richmond.
Harold M. Sewall, - - -	Bath.
Franklin P. Sprague, - -	Bath.
Frank L. Staples, - -	Bath.
Joseph M. Trott, - - -	Bath.

Somerset County.

T. A. Anderson,	-	-	Pittsfield.
Turner Buswell,	-	-	Solon.
George M. Chapman,	-	-	Fairfield.
Bernard Gibbs,	-	-	Madison.
Forrest Goodwin,	-	-	Skowhegan.
Harold I. Goss,	-	-	Bingham.
George W. Gower,	-	-	Skowhegan.
Fred F. Lawrence,	-	-	Skowhegan.
Daniel Lewis,	-	-	Skowhegan.
John W. Manson,	-	-	Pittsfield.
Edward F. Merrill,	-	-	Skowhegan.
E. N. Merrill,	-	-	Skowhegan.
Augustine Simmons,	-	-	No. Anson.
C. O. Small,	-	-	Madison.
Daniel Steward,	-	-	No. Anson.
L. L. Walton,	-	-	Skowhegan.
George G. Weeks,	-	-	Fairfield.

Waldo County.

A. A. Beaton,*	-	-	Stockton Springs.
Ellery Bowden,	-	-	Winterport.
Fred W. Brown,	-	-	Belfast.
R. F. Dunton,	-	-	Belfast.
George E. Johnson,	-	-	Belfast.
Eben F. Littlefield-	-	-	Belfast.
Ralph I. Morse,	-	-	Belfast.
Arthur Ritchie,	-	-	Liberty.
Wm. P. Thompson,	-	-	Belfast.

* Deceased.

Washington County.

James M. Beckett,	Calais.
Frederick Bogue,	East Machias.
F. I. Campbell,*	Cherryfield.
George A. Curran,	Calais.
Clement B. Donworth,	Machias.
Herbert J. Dudley,	Calais.
Oscar H. Dunbar,	Jonesport.
George R. Gardner,	Calais.
H. H. Gray,	Millbridge.
F. B. Livingstone,	Calais.
J. H. McFaul,	Eastport.
I. G. McLarren,	Eastport.
L. H. Newcomb,	Eastport.
Elisha W. Pike,	Eastport.
B. Rogers,	Pembroke.

York County.

Fred J. Allen,	Sanford.
Eva E. Bean,	Old Orchard
James O. Bradbury,	Saco.
Elmer J. Burnham	Kittery.
Arthur J. B. Cartier	Biddeford.
Benjamin F. Cleaves,	Biddeford.
Walter H. Downs,	So. Berwick.
George A. Emery,	Saco.
Geo. D. Emery,	E. Lebanon.
Willis T. Emmons,	Saco.
Hampden Fairfield,*	Saco.
Walter J. Gilpatrick,	Biddeford.

* Deceased.

George A. Goodwin,	- -	Springvale.
Edward F. Gowell -	- -	Berwick.
Frank M. Higgins,	- -	Limerick.
Louis B. Lansign, -	- -	Biddeford.
Percy N. H. Lombard,	- -	Old Orchard.
Luther R. Moore,-*	- -	Saco.
Joseph R. Paquin, -	- -	Biddeford.
W. P. Perkins,	- - -	Cornish
Charles H. Prescott,	- -	Biddeford.
Moses A. Safford,*	- -	Kittery.
John C. Stewart,	- - -	York Village.
Edwin Stone,	- - -	Biddeford.
Lucius B. Swett,	- - -	Kittery.
Hiram Willard,	- - -	Sanford.

* Deceased.

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MAINE STATE B

ASSOCIATION

HUNDRED TWELVE AND

EIGHTEEN

Report

OF THE

MAINE STATE BAR ASSOCIATION

FOR

1912 AND 1913

VOLUME 18

With the Proceedings of the Annual Meeting held at Augusta, Maine January 8, 1913

AUGUSTA:
PRESS OF CHARLES E. NASH & SON
1913

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MAINE STATE BAR ASSOCIATION

SECRETARY'S OFFICE

AUGUSTA, MAINE, January 1, 1913.

DEAR SIR:—

The annual meeting of the Maine State Bar Association will be held at the State House on Wednesday, January 8, 1913. The business this year will require morning and afternoon sessions.

The morning session will be held in the room of the Judiciary Committee at 10.30 o'clock with the following order of business.

1. Address by President O. F. Fellows.
2. Reports of the Secretary and Treasurer.
3. Reports of Committees.
4. Address, "Admiralty," by Hon. Edward H. Blake.
5. Address in memory of our former presidents Hon. Franklin A. Wilson and Hon. Herbert M. Heath, by Hon. L. B. Deasy.

The afternoon session will be held in the Senate Chamber at 2.30 o'clock with the following order of business.

6. Address, "The Need of a Law Court Distinct from Nisi Prius," by Hon. J. H. Montgomery.
7. Address, "The Law's Dispatch in Maine," by Mr. Justice Cornish.

8. Address, "Divorce," by Hon. Robert T. Whitehouse.
9. Election of new members.
10. Election of officers.
11. The transaction of any other business that may come before the Association.

The meeting will conclude with a dinner at the Augusta House at 8.30 o'clock in the evening. The Secretary must guarantee a certain number of plates. Will you fill out and mail *at once* the enclosed postal so that the Secretary may know whether or not you will be present. This is necessary in order to make arrangements.

NORMAN L. BASSETT, Secretary.

Maine State Bar Association

ANNUAL MEETING

AUGUSTA, MAINE, January 8, 1913.

In accordance with the call for the meeting, which was duly sent to each member of the Association, as provided by the By-laws, the annual meeting of the Maine State Bar Association was held at the State House, Augusta, on Wednesday, January 8, 1913, at 10.30 A. M.

The meeting was called to order by the President of the Association, Hon. O. F. Fellows of Bangor.

On motion of Mr. Blanchard, the second item of the program was taken up, being the report of the Secretary and Treasurer.

The Secretary stated that he had no formal report to make.

The report of the Treasurer was then submitted as follows:

REPORT OF TREASURER

NORMAN L. BASSETT, Treasurer, in account with Maine State Bar Association for 1911 and 1912.

DR.

1911				
Jan.	1,	To cash balance from preceding year		$223 50
Jan.	12,	To amount received from banquet		125 00
Feb.	1,	To interest on time Account Augusta Trust Co.	$ 2 04	
May	1,	To same	2 04	
Aug.	1,	To same	2 04	
Nov.	1,	To same	1 14	
				$7 26
Jan. to Dec.	1, 31	To dues collected, to wit: for 1897, '98, '99, '00, '01, '02, '03, '04, each $1.	$7 00	
		for 1905	4 00	
		for 1906	5 00	
		for 1907	6 00	
		for 1908	10 00	
		for 1909	18 00	
		for 1910	38 00	
		for 1911	240 00	
				$328 00
				$683 76

CR.

Jan. 3,	By paid postals	$ 3 00	
4,	" " stamps	3 00	
7,	" " envelopes	2 75	
12,	" " banquet expenses	132 05	
18,	" " J. S. Estes, stenog.	19 00	
23,	" " stamped envelopes	3 44	
24,	" " postals	3 00	
25,	" " stamps	5 00	
Feb. 4,	" " express, tolls, etc.	3 57	
10,	" " J. S. Estes, sp. meeting	5 00	
Mar. 28,	" " stamps	1 00	
July 6,	" " stamps for reports	28 83	
6,	" " trucking & stamps	1 00	
20,	" " C. E. Nash & Son	211 90	
		$422 54	
	" " Secy. & Treas.	100 00	
Dec. 31,	" cash on deposit Augusta Trust Co.,	161 22	
			$683 76

DR.

1912			
Jan. 1,	To cash balance from preceding year		$161 22
Feb. 1,	" interest on time account Augusta Trust Co.	$1 48	
May 1,	" same	1 62	
Aug. 1,	" same	2 16	
Nov. 1,	" same	2 80	
			$8 06

Jan. 1,	" dues collected, to wit :		
to	for 1905	$ 1 00	
Dec. 31	for 1906	1 00	
	for 1907	1 00	
	for 1908	3 00	
	for 1909	3 00	
	for 1910	5 00	
	for 1911	26 00	
	for 1912	217 00	
			257 00
			$ 426 28

CR.

May 24,	By paid postals	$ 10 00	
29,	" " stamps	6 70	
June 5,	" " Sec. & Treas.	100 00	
July 10,	" " C. E. Nash & Son	5 00	
Sept. 11,	" " stamps	1 00	
Dec. 31,	" " postals	3 21	
		$125 91	
Dec. 31,	" cash on deposit Augusta Trust Co.,	300 37	
			$426 28

On motion, the report of the Treasurer was referred to an Auditor; and the President appointed Hon. Fred J. Allen as Auditor.

The Auditor subsequently reported that he had examined books and vouchers of the Treasurer and

found them correct. On motion, the report of the Auditor was accepted.

On motion the report of the Treasurer was then accepted and approved.

THE PRESIDENT: The reports of committees are next in order. The Committee on Membership appears to be first.

MR. MONTGOMERY: I am on that committee, and I have here the following names to propose:

REPORTS OF COMMITTEES

		When Admitted
	AROOSTOOK COUNTY	To Maine Bar.
Aaron A. Putnam,	Houlton,	Aug. 25, 1911
	CUMBERLAND COUNTY	
G. Allen Howe,	Brunswick,	April 21, 1903
Raymond S. Oakes,	Portland,	Sept. 18, 1912
Frank Fellows,	Portland,	Aug. 15, 1911
	KENNEBEC COUNTY	
Harold H. Murchie,	Augusta,	Oct. 15, 1912
	KNOX COUNTY	
Oscar H. Emery,	Camden,	Oct. 11, 1910
	LINCOLN COUNTY	
Cyrus R. Tupper,	Boothbay Harbor,	Sept. 20, '90
	OXFORD COUNTY	
Albert Beliveau,	Rumford,	Feb. 13, 1911
Fred R. Dyer,	Buckfield,	Oct. 12, 1897
	PENOBSCOT COUNTY	
Taber D. Bailey,	Bangor,	Oct. 4, 1898
P. B. Gardner,	Bangor,	Aug. 18, 1911
Wm. H. Mitchell,	Newport,	Feb. 27, 1900
Geo. E. Thompson,	Bangor,	Apr. 15, 1899

WALDO COUNTY

John R. Dunton,	Belfast,	Sept. 1898

YORK COUNTY

Aaron B. Cole,	Eliot,	Sept. 20, 1904
Homer T. Waterhouse,	Kennebunk,	June 5, 1897

THE PRESIDENT: And is it the pleasure of the Association that the gentlemen whose names have been read be elected to membership in the Maine Bar Association?

It was agreed to.

No reports were made from the committees on Law Reform, Legal History and Legal Education.

The Association then listened to an able address by Edward H. Blake, Esq., on "Admiralty," which was read by the Secretary owing to the enforced absence of Mr. Blake. The address was as follows:

ADDRESS OF HON. EDWARD H. BLAKE

Mr. President and Gentlemen of the Bar Association:

I have but fifteen minutes under the rules of this Court. First, let me express my appreciation of this honor given me by the courtesy of your President. It seems presumption on my part to attempt to hold your attention, and I venture only because the general practice of law in Maine does not call for familiarity with Admiralty law. The text is large and time is fleeting.

Of course, as you know, the law of Admiralty concerns itself with a ship and the reciprocal liabilites and obligations *ex contractu* and *ex delicto* that arise from the activities of the ship upon *interstate* and international waters navigable in a commercial sense. The first navigator, Captain Noah, acted without the license of a constituted board—without life boats—charts—or the marine furniture required today by law, yet he made port with more or less success. It is interesting to contemplate what our condition would be today provided the records in the then marine Lloyds had been;—"Sailed—the Ark—Noah, Captain—not heard from." The special legislation regarding equipment that has grown out of the Titanic disaster evidences the progress from that day to this.

The dignity of the Admiralty rises to that of international law. It is a branch of the law of nations. Its sanction in this country is the United States Constitution.

"If we impinge never so lightly on the life of a fellow mortal the touch of our personality, like the ripple of a stone cast into a pond, widens and widens in unending circles through the aeons, till the far-off Gods themselves cannot tell when action ceases."

This truth may be said of the ancient impulse of the principles of the Admiralty law upon the commercial relations of mankind since nation dealt with nation.

The Admiralty law is the common law of the sea—based upon reason and expanded by precedent. It is called the general maritime law—is administered by the courts of nations, and, as modified by environment, becomes the maritime law of the particular nation which adopts it.

Our own constitution provides that the judicial power of the United States shall extend to "all cases of Admiralty and maritime jurisdiction."

The judiciary act in extending this phrase in the constitution provides that the Federal District Court shall have exclusive jurisdiction of all cases of Admiralty and maritime jurisdiction,—saving to suitors in all cases the right of a common law remedy where the common law is competent to give it. This common law remedy has been construed to be the right of a plaintiff to proceed *in personam* against a defendant—a remedy the common law *is* competent to give. While the jurisdiction of the Admiralty is thus concurrent with that of the common law, there are certain distinctions of a practical nature in actual practice which may be of interest.

Let us touch then upon some considerations which should influence the practitioner in his choice of

forum in a case triable either in the Admiralty Court or Court of Common Law.

The common law doctrine of contributory negligence does not obtain in the Admiralty. Let us assume a case of collision and resulting damage between vessels in Penobscot Bay.

At common law, if the Defendant could prove contributory negligence on the part of the Plaintiff, such proof would defeat recovery. In the Admiralty contributory negligence is not a bar to recovery, but a factor in the adjustment of damages.

The theory of the Admiralty is that in the stress of circumstances that usually accompanies a collision at sea, an act of negligence is apt to be done *in extremis*, and the degrees of negligence are of such refinement as not to be susceptible of precise determination.

Therefore, the Admiralty endeavors an equal adjustment of the burden of damage.

A common law court could entertain an action of tort against the ship owners, but could not give the peculiar remedy of a division of damages which the Admiralty alone may give.

Again—in a case of salvage—a common law court has jurisdiction for a suit of salvage on express contract and sometimes on contract implied, but the salvage award will follow the usual rule of practical compensation for the work and service rendered. The award cannot take into consideration the personal equation of self sacrifice—of the peril involved and of the bravery adequate for its overcoming. This the Admiralty Court may do.

Again—the peculiar remedy afforded by the Limited Liability law where there is a multiplicity of

claims and the proceeding is both *in personam* and *in rem* the common law is wholly incompetent to give.

Moreover, the simplicity of procedure is in favor of the Admiralty. The court is judge of both the law and the fact. The court is always in session, thus avoiding the delay attendant upon the regular terms of the state courts—amendments are generously allowed—the discretion of the court being directed toward a prompt settlement of the controversy so as to interfere the least with the commercial activities of the ship.

The elimination of the jury seems to be an anomaly in the administration of justice as represented by the genius of the Anglo-Saxon race. A word of explanation may be of interest. As stated in Benedict, "Depriving us in many instances of the benefit of trial by jury" was one of the grievances enumerated in the Declaration of Independence, and the trial by jury has always, to the American people, been an object of deep interest and solicitude, and every encroachment upon it has been watched with great jealousy. The right to it is secured by all the State Constitutions, and the want of such an express security in the Constitution of the United States was one of the strongest objections taken against its adoption.

To meet the public feeling on this subject, the Sixth and Seventh Amendments to that instrument were adopted, the Sixth Amendment providing that in all criminal prosecutions the accused should enjoy the right to a speedy and impartial trial by jury of the State or District where the crime should have been

committed,—and the Seventh Amendment preserving the right of trial by jury in actions at common law where the value in controversy exceeds twenty dollars. Neither of these provisions applied to Admiralty cases.

The Judiciary Act passed immediately after the adoption of the Constitution, in its provisions for the organization of the District Courts provided that "the trial of issues of fact in the District Court in all cases *except* civil cases of Admiralty and maritime jurisdiction shall be by jury."

Therefore, when the people had the subject before them, fresh from discussion in relation to the Constitution itself, they confined the necessity for jury trials to crimes committed within the territorial limits of the United States, and to a limited action at common law, but left the jurisdiction of transactions so peculiar as those of the sea to be exercised only by judges schooled in the principles and mystery of such transactions, as have been done in all ages and nations before, and refused to leave them to the uncertainties of juries familiar only with the customs and necessities of the land. Congress wisely gave to the trial of maritime offenses a jury, but as wisely decided that in causes civil and maritime, the court should decide the facts as well as the law.

The student of the Admiralty law finds himself at the same time a student of the Constitution. Its enlargement by judicial construction over the limitations imposed by English and Continental law, is a conspicuous example of the wisdom of those great Federal judges, whose interpretation of the Constitution was of the constructive character.

The English rule, that the Admiralty jurisdiction was limited by the ebb and flow of the tide, was an issue in "The Steamboat Thomas Jefferson," 10 Wheaton 428, and sustained in an opinion of the Supreme Court delivered by Mr. Justice Story in 1825. But all the navigable rivers in England are within the ebb and flow of the tide. This rule was followed until in Waring et al. v. Clarke, 5 How. 441, the Supreme Court showed aversion to such limitation. In 12 How. 443, Chief Justice Taney intimated that the presence or absence of a tide was simply a test whereby the public or private character of water was determined, and was not applicable in this country.

This is but one illustration of many which might be given to show that the student of the applied construction of law may find an inexhaustible wealth in the Admiralty decisions of the Federal Courts.

MR. BLANCHARD: I move that a committee be appointed to nominate a list of officers for the ensuing year; and the motion being agreed to, the Chair appointed as such Committee, Messrs. Blanchard of Wilton, Smith of Patten and Deasy of Bar Harbor.

On motion of Mr. Blanchard adjourned to meet at the Senate Chamber at 2. 30 P. M.

(Afternoon Session.)

THE PRESIDENT: The first order of business will be the report of the Committee on Nominations.

MR. BLANCHARD: The Committee appointed to make nominations beg leave to make the following nominations for officers for the ensuing year:

OFFICERS OF THE ASSOCIATION

President.

George C. Wing, - - - Auburn.

Vice-Presidents.

Fred J. Allen, - - - Sanford.
Wallace H. White, Jr. - - Lewiston.
John Wilson. - - - Bangor.

Secretary and Treasurer.

Norman L. Bassett, - - - Augusta.

Executive Committee.

W. H. Newell, - . - Lewiston.
Charles S. Cook, - - - Portland.
Raymond Fellows, - - - Bangor.
John W. Manson, - - - Pittsfield.
Job H. Montgomery, - Camden.

Committee on Membership.

Reuel W. Smith, - - - Auburn.
Beecher Putnam, - - - Houlton.
Nathan Clifford, - - - Portland.
Cyrus N. Blanchard, - - - Wilton.
C. H. Wood, - - - Bar Harbor.
J. H. Montgomery, - - - Camden.

Joseph Williamson, - - -	Augusta.
Emerson Hilton, - - -	Wiscasset.
Alton C. Wheeler, - - -	S. Paris.
M. Laughlin, - - -	Bangor.
Frank E. Guernsey, - - -	Dover.
W. T. Hall, Jr., - - -	Bath.
C. O. Small, - - - -	Madison.
R. F. Dunton, - -	Belfast.
Frederick Bogue, - - -	E. Machias.
Benj. F. Cleaves, - - -	Biddeford.

Committee on Law Reform.

Charles F. Libby, - - -	Portland.
John A. Morrill, - - -	Auburn.
E. C. Ryder, - - -	Bangor.
B. F. Maher, - - -	Augusta.
Edw. F. Merrill, - - -	Skowhegan.

Committee on Legal History.

J. L. Reade, - - -	Lewiston.
Ira G. Hersey, - - -	Houlton.
Robert T. Whitehouse, - -	Portland.
E. E. Richards, - - -	Farmington.
E. P. Spofford, - - -	Deer Isle.
Norman L. Bassett, - - -	Augusta.
Arthur S. Littlefield, - - -	Rockland.
James B. Perkins, - -	Boothbay Har.
Ralph G. Parker, - - -	Rumford Falls.
J. Willis Crosby, - - -	Dexter.
Henry Hudson, - - -	Guilford.
Jos. M. Trott, - - -	Bath.

Forrest Goodwin, - - - Skowhegan.
Ellery Bowden, - - - Winterport.
L. H. Newcomb, - - - Eastport.
Fred J. Allen, - - - Sanford.

Committee on Legal Education.

Tascus Atwood, - - - Auburn.
R. W. Shaw, - - - Houlton.
Benjamin Thompson, - - Portland.
J. Blaine Morrison, - - - Phillips.
H. E. Hamlin, - - - Ellsworth.
Frank G. Farrington, - - Augusta.
Reuel Robinson, - - - Camden.
Emerson Hilton, - - - Damariscotta.
A. S. Kimball, - - - Norway.
Bertram L. Smith, - - - Patten.
W. E. Parsons, - - - Foxcroft.
George E. Hughes, - - - Bath.
George G. Weeks, - - - Fairfield.
Wm. P. Thompson, - - - Belfast.
George A. Curran, - - - Calais.
Willis T. Emmons, - - - Saco.

THE PRESIDENT: And is it the pleasure of the Association to accept the report of the Committee?

Agreed to.

THE PRESIDENT: The chairman of the Committee moves that the Secretary be instructed to cast the unanimous vote of this Association for these officers named; and is that the pleasure of the Association?

Agreed to.

THE SECRETARY: The Secretary has attended to his duty and has cast the vote of the Association for the officers named.

THE PRESIDENT: The President of the Association has a short paper to read. It may not be very interesting to any one but the President, but it is near to his heart for this reason,—that he has had occasion in the last two or three years to purchase law libraries for two boys.

The President then read the following address; which was received with hearty applause:

ADDRESS OF PRESIDENT FELLOWS

Gentlemen of the Bar Association:

During the past twenty-five years we have seen and heard of many and various plans of reform in the law and its machinery. We have seen ideas take shape and become statutes to remedy real as well as fancied evils. We have seen statute and common law revised and codified in answer to the cry for simplicity and expedition. What the results are, and what the results will be, time alone will tell, if time already has not told.

Unhappily, legislation has been and must be extempore. This in itself is unfortunate; but worse than that, our laws are for the most part made and enacted by persons who are not trained or educated for the great work of legislative composition. The products of a legislature are the "patchwork" of committees, but under our system of government we must expect the world to go on as it has done for more than a century, and we must see legislation continue to increase, and evils and uncertainties remain and accumulate because of it; for all lawyers know by experience that no written law ever cured one uncertainty, without producing another in its place.

The written law of a State, however, is a very different thing from its unwritten law. The written law embodies general principles merely, and cannot reach particular cases, whatever may have been the abilities of the legislators who enacted it. It is to

those principles, and rules of action applicable to the government and security of person and property that have been dictated by natural justice and cultivated reason for ages to which we must turn in nearly every instance for complete justice. Sir Matthew Hale said that "in the new and unthought of emergencies that so often happen" we must rely on that law which is "not the product of the wisdom of some one man, or society of men, in any one age; but of the wisdom, counsel, experience, and observation of many ages of wise and observing men." This is the law founded before Moses expounded the Ten Commandments, which the Romans endeavored to express in the Law of the Twelve Tables, and which was interpreted by their judicial decisions. It is the law of Justinian and his Digests that finally reaches a nearly perfect system with the early English lawyers when precedent gets a firmer hold and books begin to slowly multiply. It is the same law that was imported by our colonial ancestors, sanctioned by royal charter and colonial ordinance and assumed by our courts.

To the legal student as well as the active practitioner the importance of this law is obvious, but that this is an age of bold, reckless, and presumptuous innovation, acting in contempt of the usages and wisdom of this Law, no thoughtful lawyer can fail to notice. And it is this contempt expressed in ill advised legislation that makes it an absolute necessity that the settled principles of the common law should be undisturbed and more clearly and accurately defined.

This law is in truth *an unwritten* law, but the evidence of its existence is to be found on every hand.

The modern lawyer turns to the judicial decision as the most certain evidence and the most authoritative and precise application; just as the legal giant of old placed reliance in his Coke and Blackstone. Which method is the better I cannot say, but this is certain, the modern method is either the cause or the result of a condition that daily grows more and more serious. The reported decisions in all our states so enormously multiply that the lawyer's problem is not so much where to find the law as to weigh and estimate the value of what he discovers. It is in truth more than ever "the lawless science of the law, the countless myriad of precedents."

When we consider the thousands of cases to be pointed out, which have been overruled, doubted, or limited in their application we can appreciate Chancellor Kent when he says "even a series of decisions are not always evidence of what the law is." But the evil consists not in the printing of overruled decisions, but in the publishing of cases which are merely iteration, repetition, and limitation of the best established propositions.

It is impossible for the practitioner of today to have a library sufficiently large that he may find the grain of wheat for which he is seeking. This is only possible in the larger centers. The result is, that the average lawyer, following as he does the "case system" so called, is not so well equipped as the average lawyer of a generation ago who relied on a library of a few well chosen text books or treatises that concisely pointed out the fundamental principles.

Lord Bacon spoke of the necessity of a revision and digest of the law in order to restore it to a sound and

profitable state when there should arise a "vast accumulation of volumes throwing the system into confusion and uncertainty." Even in his day he realized the evils resulting from an indigestible heap of laws and legal authorities to be great and manifest, and tending to destroy the certainty of the law. The Biblical wise man who said that "of making many books there is no end" and also that "much study is a weariness to the flesh" should invite Lord Bacon into a modern law library in order that they both might fully realize the truth of their predictions.

The period anticipated by these prophets has in fact arrived, and the cause of truth and justice tempered by the spirit of the age, requires simplicity in the system. The lawyer may know the principle and the reason upon which such a principle is based, and yet is not strong in his position until he knows just where that authority for his principle is to be found, and may be read to a skeptical court. The difficulty is not lack of ability on the part of the court, or erudition on the part of the counsellor; but the innumerable phases of cases, the vast increase of modification by legislation, together with the many conflicting, revised, and overruled opinions of State and Federal Courts have made the practice a veritable maelstrom, into which the unfortunate practitioner plunges in search of the precious jewel—a parallel case.

Many of us can remember when the libraries located in our County Court Houses consisted of two or three text books, possibly the Statutes, and a very incomplete set of Maine Reports. Today these same libraries have grown into thousands of volumes, and if something is not done to restrain the deluge, the

efficiency of the lawyer of the next generation and the destiny of his client will consist of but a series of vain expectations. The condition must be remedied, and the remedy must come from the bar.

If we turn again to Bacon who foresaw the condition, we learn that his remedy was this:—"Cases which merely iterate and repeat should be purged away."

It is true that the one great abuse in the reporting of cases is, that there is no very careful selection of decisions which are worthy to be reported, but every adjudication, whether upon some new principle, or upon points which have been again and again decided, are given in one chronological mass.

The certainty of the law is next in importance to its justice; it must be well defined and unwavering. If a decision has been made upon solemn argument and mature deliberation, the presumption is in favor of its correctness; and the community have a right to regard it as a just and final declaration or exposition of the law. What need therefore to again and again rehearse and repeat the same principle as applied to a similar state of facts, or as applied to a state of facts varying just enough, so that the previous decision must be distinguished and rendered doubtful.

The fault does not lie altogether with the Courts, it also rests within the Bar. Each member demands that his case shall appear in the Report and the bench has acquiesced. The supply has only been equal to the demand, but the demand has not come from the public whose rights are affected, nor has it come from that vast army who will occupy our places in the future—the Bench and the Bar of tomorrow.

I shall not attempt to offer a cure or a mitigation

here, for the problem is one that requires the best efforts and the deepest study of all lawyers. We should propose some method and should carry it out, that the future lawyer may not only "know the law," but also know "where to find it."

The great principles should be supported and illustrated by the most judicious selection of adjudged cases. They should be selected with discrimination and arranged with care and skill. It is only reasonable to expect change in the application of the rules of law to the changing affairs of men, but the fundamental principles do not alter. The desire and determination to do justice do not change, although the decision as to what is justice in a given case must vary with the circumstances; and those cases only should be published that bring forward a new principle, or apply an old principle to new conditions, for by discriminating selection, many evils will be corrected.

Let us find some method to "purge away" iteration and repetition and leave for the future only a few bright beacon lights in the progress of judicial investigation, which will safely and surely light its footsteps in the road to truth.

THE PRESIDENT: The next in order is No. 6, "The Need of a Law Court Distinct from Nisi Prius," by Hon. J. H. Montgomery.

Mr. Montgomery then read the following address:

ADDRESS OF HON. J. H. MONTGOMERY

"Why there should be a Law Court, and a Nisi Prius Court."

Mr. President and Gentlemen of the Bar Association:—

When the president of the Bar Association designated me to prepare and read a paper at this annual meeting, on, "Why there should be a Law Court, and a Nisi Prius Court," he made no excuses in so doing, and prescribed no limitations. In responding to the request, I make no excuses. The limitations suggest themselves. I can see their extent, and so can you. They are within the measure of my own capabilities, and easy enough for me and you to discover.

The subject is a broad one, and it is elastic as well. It is susceptible of the most refined arguments. It is circumscribed by the devotion which we entertain for our Supreme Judicial Court, and its members, and our fears for them and the mysteries of its potentialities. They restrain the idea of change, however desired. They fetter the wish for something new in court procedure. We seem to wait on their power to do something. The constitutional designation, "Supreme Judicial Court," contains all the mysteries within itself. It seems to reach upward into all powers and realms, and to extend around and about everything judicial on which we stand and operate. We seem to wait upon it.

The word "Supreme" has vast significance to the finite mind. It has never been fully comprehended by human understanding, and probably never will be. And yet mankind have shaped their courses under Supreme control, and progressed onward and upward towards their ideals justified in all advancement by the general voice of the people which is said to be the voice of the Supreme. At least that is our best interpretation of it in governmental affairs, and it works safely and to our great progress.

Supreme power is subject to human domination. The Supreme was most potentially manifest in the Lightning, which rules in the clouds. It was a mysterious power. It awed the brave. It held back progressive thought. It could not bar progressive thought. Nothing can. Mankind desired new and greater application of strength to bear their increasing burdens. They gazed upon the Lightning and saw what it would do and boldly approached it; enticed it; caught it; set it to work in a human way, and for the humanities.

The Lightning still rules in the clouds. Its principles seized by humanity and applied to their activities by intelligent agencies disarrange none of its powers, or circumscribe any of its supremacy in its realm of action. There are more and better things going on by a new way of applying its powers. That is all.

It may be the same with our Supreme Court. It may be approached and its power applied in new ways, and to more useful ends. It may be interpreted by the voice of the people without its aid. It is for the people and a guide to their progress. The extent of

its usefulness may not be known until it has a more special application. It may remain in the cloud, it should be a lamp carried in the hand illuminating every advancing step, and throwing upon every new phase of civic life an approving aspect. It has, and it should, and it will serve the people, in some way, to their best advancement.

The National constitution, in the very same language as our state constitution, provides for a National judiciary. It provides for a "Supreme Court, and such other courts as the Congress may from time to time establish." The history of the development of the National Supreme Court is like our own. It began with a few judges, and as court proceedings multiplied and inferior courts were established, the number of its judges increased until it embraced nine judges, one more than our own. As nisi prius trials multiplied, and disputed questions of law increased, the supreme judges of the national supreme court found themselves continuously engaged in settling the law questions and thus became a Law Court, distinct, and exclusively such. The Supreme Court of Massachusetts has followed the same development, and arrived practically at the same condition.

It is a practical interpretation of the part intended for the Supreme Judicial power of the nation by the people. The source of fixing the law and drawing upon its principles in the settlement of all disputes is the province of judicial power. Trials are but preparations, which may or may not require reference to the ultimate source of the law to which the facts may be brought for comparison and judgment. Trials are an initiative proceeding, where great and small,

simple and complex disputes are brought and winnowed, and prepared for a final analysis, if found necessary. The law is the final analysis. Law Courts and Trial Courts seem distinct, and history shows how they separate in operation, while working to the same purpose.

The law is supreme. The Law Court is essentially the Supreme Court.

The National Supreme Court, the Supreme Court of Massachusetts and all other Supreme Courts, are more practical and useful, when assuming exclusive law duties. The trial courts are more alert and active then, and litigation is more expeditious and satisfactory, and progression in court methods is more apt and possible. Court methods must grow and expand with the growth of communities, in population, business affairs and wealth.

The Supreme Judicial Court in Maine, in its inception, corresponds with the Supreme Court of the United States. The constitutional provision for its existence is the same. It had its origin only a few years subsequent to the National Court. The National Court in 1789; Maine in 1821, thirty-two years later. At that date the National Supreme Court was in the labors of its formation. The number of its members was being increased to meet and serve the needs of the growing and expanding nation. It was presided over by John Marshall, who was in the center of his thirty-four years of service as chief justice, and in the midst of those contentions over the limitations that the power the supreme court of the nation was to assume. His term of service extended from 1801 to 1835. In June 1807, he was holding a Nisi

Prius Court at Richmond, Va. for the trial of Aaron Burr for treason and misdemeanor. His associates were holding trials for other purposes in other states. Justice Story held several terms of court at Wiscasset, Maine. There were then six justices of the National Supreme Court. There are now nine, or a chief justice and eight associate justices.

In the beginning of the national government, in 1789, the judiciary consisted of the supreme court, circuit court, district court and some other inferior courts. No designation of the powers of the supreme court was made, except the specific things given by the constitution. It embraced all courts. The circuit court judge was given the power and jurisdiction in his court as the justice of the supreme court, allotted to the circuit court might have. The justices of the supreme court were to be allotted among the circuits, and were to attend at least one term of the circuit court in each district of the circuit court to which allotted, during every period of two years. Fourteen years afterwards, in 1803, the right of the supreme justice to preside in a circuit court was made a question of law. There was no special law for it, only on order of the court. And it was decided to have been the interpretation of the judiciary act at the formation of the courts and was held the law from that interpretation. The custom has ceased in all but name. It leaves the spirit of the supreme court of the nation in the inferior courts of which it is the head, to which circulates the legal principles for solution, that are unsettled by the federal courts.

The national supreme court from the same constitutional provision, has been resolved into a distinctive

Law Court. It is an example and guide for our State to follow. The state adopted the constitutional provision of the national judiciary act at its organization, and would naturally follow its development. The only question arising is when and how it should be done.

In some respects our state has tried to follow the national method in the establishment of its courts.

At the organization of the state in 1821, inferior courts, called courts of common pleas, were established. They had very limited jurisdiction. Later in 1839, eighteen years after its organization, district courts were established. Those were limited in jurisdiction. They were not given sufficient jurisdiction to relieve the supreme judicial court of its duty to hold nisi prius courts, and after sixteen years of trial, in 1885, it was abolished and our present system established. At that time the number of the supreme judges was increased from three to seven, and their term of office was changed from a life term to seven years by constitutional amendment.

Here may be said to have occurred the second step away from the course of development of the state judiciary along the course of the national judiciary. The first step was in not giving the district court judge jurisdiction in the trial of causes equal with the supreme court judge allotted to hold court in his district. That would have given the supreme court judge occasion to leave trials to the district judge and assume the settlement of the law questions arising in the district courts, as was the case of the circuit courts of the United States Courts. The second step was in limiting the term of the supreme

court judges to seven years. That act placed the supreme court judge in a position where a desire for reappointment might withdraw him from independent action and stifle in him any disposition to change his duties, or the methods of court procedure. I do not say that it has had that influence. But the court has remained as established in 1855, without other apparent reason. For there is no legal reason against the development of a Law Court distinct from nisi prius courts, in the same manner as pursued by the United States Courts. All other state institutions have changed and have been enlarged in their spheres of operation. The school system of the state, though still the common school system, has new and advanced methods. It has grown into a great university, with every grade of school established in the remote as well as the centers of population, to carry up to it the work of popular education. The supreme court still pursues its cumbrous and dual methods of administering justice.

And while our supreme court has retained its dual powers, there has been a peculiar judicial growth in our court system. It is in a local way. It seems to be forced upon localities for want of state action.

The abolishment of the District Courts, left the minor matters, except probate courts and county commissioners courts, to trial justices. These little courts were found to be inadequate, and the larger communities secured Municipal and Police Courts. Out of them grew the Superior Courts of Cumberland and Kennebec counties, and the forty-two other Municipal Courts scattered throughout the state, some counties having as many as five of them; their

jurisdiction varying from fifty to three hundred dollars, some more; their salaries, including their recorders, amounting to thirty thousand dollars anually, and perhaps more. These, with one hundred and twenty-nine trial justices of the state, make an aggregation of judicial power, even if small in jurisdiction, numerically worthy of notice.

This dual and indefinite system of court procedure may be what our civilization needs. They may be the natural growth, commensurate with the importance of legal justice with us. In the course of time, how long can not be foretold, the jurisdiction of these inferior courts may be enlarged, so that they may assume the trial of all causes, leaving the Supreme Judicial Court to its great and important duty of promulgating the law. There is hope for it. The desire for power and better pay, will inspire the inferior court judges in the direction of the development. And the forced relief from the labor of trial courts, will come as boon to the Supreme Judicial Court Judges. When one gains courage, and the other loses fear, they will bring about results. An earnest and enlightened Bar may hasten the process.

It is interesting to note the causes why our Maine court, after adopting the constitutional provision of the national constitution as a basis for its judiciary, did not continue its growth and development along the line of the growth and development of the national judiciary. It would require more time than this occasion allows to give the causes in detail. It would be writing history as elaborate as the lectures of a Kent. But a brief reference may be made to them, sufficient to excite the student's curiosity and desire for a full investigation.

When the national judiciary began its development, after its organization, it met not only opposition, but severe criticism. It began under Federalist domination which went out with the defeat of John Adams for president by Thomas Jefferson. The circuit courts had been established during his term, and to secure all the advantage he could retain in defeat he employed the last moment of his term of office in appointing all the circuit judges. John Marshall then chief justice, and also secretary of state, supplemented the action of the retiring president by signing the commissions as fast as he could up to the last moment. They were called the "Midnight Judges." Later the law of their establishment was repealed to get rid of them, leaving the United States District Court as Federal Court. Nearly seventy years later the circuit court was re-established, and demonstrates its usefulness by its rapid enlargement, and popular approval.

Our District Courts might be re-established with like results.

The National Supreme Court gave other causes for censure. The chief justice going as far on one occasion as to issue a summons to the President to appear as witness in his court and give evidence. Such attempts of power by the court, filled the popular mind with apprehension, and called forth an opposition to it that lasted beyond the long term of John Marshall, and stimulates the critics of the present to a wider and more manifest desire to curb it. The agitation for the recall of judges and decisions is the spirit of these earlier criticisms.

The people of Maine noticed the conflicts between the National Courts and the populace. They were a people of thinkers, as political changes indicate up to 1860, and noting the inefficiency of its courts of common pleas, and its later district courts, made inefficient perhaps, because of their restricted jurisdiction over trials, they were abolished, and the number of the members of the Supreme Judicial Court was increased to seven by elevating the District Judges to the Supreme Court. And that the powers of the members of the Supreme Judicial Court might be curbed, changed the tenure of office from life to seven years.

The District Courts demonstrated the efficiency of the District Judges, and also demonstrated that a too limited jurisdiction rendered them useless. Under our constitution the power of the Supreme Judicial Court is so undefinable, that the formation of a distinct Law Court is a matter of growth, and to insure such a growth opportunity must be given by the establishment of such inferior courts, as will relieve the Supreme Judicial Court Judges from the necessity of holding Nisi Prius Courts.

I have touched upon the reason "Why there should be a Law Court and a Nisi Prius Court" only by intimation. The subject is too delicate in one phase to render individual opinion upon it desirable. It can be settled only by careful study of the condition of our judicial procedure. Each member of the bar has his particular experience that influences his judgment. The influences that he represents are more weighty in forming an opinion, or holding him conservative on the subject, than the general needs.

Those near the segregation of the judges of the Supreme Court have less to animate them than the general practitioner remote from such centers. It is for the service of all that courts are ordained, and that should govern their establishment.

The great need for a Law Court, as distinct from the trial of causes as is possible under our constitution is most potently expressed by our Chief Justice Emeritus, in his retiring address. It comes from his many years experience as a judge of the Supreme Court. He has retired with the highest honor, and relieved of all restraint declares that the Supreme Court Judges, "should be relieved of much of this circuit work, not all, but of much."

His declaration relates to relief of the judges from the arduous duties of holding trial courts, when the time and energy thus spent by them should be given to their Law work. What he says in full is a plea for their relief more convincing than anything I can say, and I cite you to his address.

If the court is overburdened as he says, what of the effect on the general administration of justice? Can it be efficient? Do such conditions of our judicial procedure meet the requirements of the constitution that "right and justice shall be administered * * completely and without denial, promptly and without delay?"

The State Bar Association has had this question before them for discussion since its organization without results. It may not be improper to suggest a course of lectures on our Judicial System and Procedure at the State University, for the enlightenment of the young people who are to be our future lawyers and judges.

(Applause.)

THE PRESIDENT: Is there anything to be said in discussion? If not, we will listen to an address by Mr. Justice Cornish, on "The Law's Dispatch in Maine."

ADDRESS OF MR. JUSTICE CORNISH.

The Law's Dispatch in Maine.

Mr. President and Gentlemen of the Maine State Bar Association:—

It is with no small degree of hesitancy that I announce the title of the unpretentious address that I shall submit to you this afternoon, for I appreciate fully its unusual character. It is so out of harmony with the great majority of subjects selected on similar occasions as to seem almost, if not quite, incongruous. The reports of many Bar Associations have fallen under my eye in recent years, and with but few exceptions an article on "The Law's Delay" has taken its place in the printed proceedings as regularly as the list of officers or the obituary notices.

Such a widespread complaint cannot exist without some foundation and I have no doubt that in many jurisdictions the legal machinery is so woefully clogged that the rights both of litigants and of the public are greatly hampered if not partially sacrificed. Illustrations, credibly vouched for, are numerous. The articles to which I have alluded are replete with them.

A reputable member of the Philadelphia Bar stated in June 1911 that it usually required two years for a case to reach a jury in that city, while "in Pittsburg

in 1909 the number of jury cases awaiting trial was 7274, and its four courts had tried only 783 in a year."

A business man from New York City told me a few days ago that no civil action was expected to be reached in that city in less than two years, and as a result a commercial house would submit to almost anything before seeking redress in the courts.

It is common knowledge that in Suffolk County, Massachusetts, the dockets are so congested that with all their sessions of the Superior Court at continuous work from October to June of each year, it usually requires fifteen months to reach a jury trial. Similar conditions prevailed throughout the State of Massachusetts to such an extent that, in 1910, the Massachusetts Bar Association appointed a special committee to investigate the subject and report on remedial legislation therefor.

It is easy to account in a measure for the congested condition of the dockets in these large centers. They are crowded with personal injury cases, a branch of litigation that is rapidly increasing.

But in the neighboring State of New Hampshire the same trouble seems to exist. A newspaper dispatch of November 4, 1911, from Manchester, N. H. states that Judge——"who has held court in this city since the third Tuesday in September has rendered marked service to litigants in clearing up the docket for Hillsboro County. The business of the Court has been brought down to within a year of entries, the trials now taking place being cases entered at the September Term, 1910. Heretofore cases have been about two years on the list when they reached trial."

Those who can remember the docket in our own County of Kennebec, before the establishment of our Superior Court in 1878, will recall that the docket of the Supreme Court was so overloaded that notwithstanding its three trial terms, and the October term sometimes lasting until January, a case was not reached in the ordinary course before two years after entry. Our Superior Court has removed all that congestion and about one-third of the trials in our Supreme Court is now of new entries, cases entered and tried at the same term.

Admitting, as we must, the truth of the statements of those who in their various states complain of lamentable delays in litigation, I conceived the idea sometime since of obtaining the exact data in regard to the subject in this State and I bring to you this afternoon the result of my investigation. For we should remember that the one thing that concerns us in this matter (and by us I mean, lawyers, judges, business men, legislators and the public generally) is not the condition of litigation in Pennsylvania, or New York, or Massachusetts or New Hampshire, but in Maine, the State in which we live and do business and die. That is what interests us as a practical proposition and concerning that and that alone I have endeavored to secure accurate information. It is not to be wondered at that the expression "The Law's Delay" glides glibly from our tongues and flows easily from the editorial pen because of the countless articles to be found upon the subject on every hand. But is it not well for us to know the facts here at home and not to assume that they are the same as in many other jurisdictions. From the fact that yellow

fever is raging in some southern port it does not necessarily follow that the same scourge is devastating the hills and valleys of Maine.

We are essentially a rural population widely scattered and with few manufacturing or commercial centers, and conditions here vary from those in many other states.

What then of Maine?

I. CIVIL ACTIONS AT NISI PRIUS

Let us consider the trial of civil actions first: Are our civil dockets congested?

And here let me say that a certain modicum of delay is not undesirable. Litigation at its best is a luxury for the litigants, and should not be the outgrowth of mere temper or sudden passion. Many of you have doubtless had a client rush into your office in hot haste for legal redress announcing boldly his willingness to pay his last dollar in order to vindicate his legal rights, and if your experience has been mine, it is difficult to separate the first dollar from such a suitor, much less the last one. A little delay cools some of these hot heads and the situation assumes a different view as time wears on.

Let me also say that much of the delay in the trial of causes comes from the lawyers themselves and not from the system or procedure. Members of the bar are notably courteous to one another, and the trial of many a case is deferred to another term or for several terms because of the illness or convenience or request of a brother attorney. I am not deprecating this

custom. I am merely calling attention to it as a fact to be considered.

But with all these conditions existing, how stands the docket?

Our Supreme Court, consisting of eight justices holds nisi prius terms in all the sixteen counties of the state, viz: In four counties, two terms each year; in ten counties, three terms; in one county (Aroostook) four; and in another (Penobscot) five; making a total of forty-seven nisi prius terms during the year. In addition the Superior Court of Cumberland County established in 1868 with its nine terms, and for Kennebec County established in 1878 with its five terms, are of inestimable value in relieving the Supreme Court in those counties.

Our practice is simple and familiar. It is the old common law system of pleadings with certain statutory modifications which tend to simplicity. Few technical errors creep in, which are taken advantage of by opposing counsel. In fact I think there is a growing tendency, especially among the abler practitioners, to decline such temporary advantage which can be secured only at the expense of the client's time and money. There is an increasing desire to reach and determine the real issues on their merits, and demurrers, pleas in abatement, motions to dismiss and other dilatory pleas of a like nature are growing more and more rare. In some counties they are almost unknown, and term after term will be held without a single one being brought to the attention of the court. This necessarily tends to the dispatch of business and is in the interest of the litigants who desire results.

In 1881, a Rule of Court was adopted which provided that any action should be considered in order for trial at the return term, when the party desiring it shall have given written notice thereof to the adverse party ten days before the sitting of the Court. In 1908 this was amended so that at the present time the notice to be given by the plaintiff shall be thirty days, by the defendant need be only ten days. The result of this has been that at nearly every term, in every county, many new entries are reached and tried.

Of course the mere adoption of such a rule would not relieve a docket from congestion. It would rather increase it, were it already overcrowded; but the fact that so many new entries are actually tried negatives such overcrowding. And here it is proper to define what we mean by a congested docket. A large docket is not necessarily a congested one. Many of the cases are kept on because they are in process of settlement, or will be adjusted later. It matters not whether a docket has fifty cases upon it, or a thousand, if, when it is called, as it must be on the first day of each term, every case that is ready for trial and that either or both parties wish to try, can be tried. The fact that many other cases are on the docket, but are merely continued to suit the convenience of the parties, in no way impedes the progress of those that are actually for trial. It is only the cases that are for actual trial that can be said to congest the docket. And it is the invariable practice in every county on the first day of each term to make up a trial list and assign every case that is marked for trial by either party; and the cases so assigned are tried when reached, unless they

are continued for good cause shown, or otherwise disposed of.

There is nowhere any blocking of the road. It is true that occasionally the time allotted to the justice presiding is a little less than it should be, owing to an assignment in another county immediately following, so that the three weeks allowed for the term are not quite long enough to complete the work and could the justice remain a fourth week or a portion of it, a few other cases would be tried. The assignments of the justices are made with great care but sometimes an unusual amount of work will develop and this result will follow. But the occasions are rare. In my own experience of nearly six years on the Bench, I can recall but two. In all other terms, all the cases both civil and criminal in which trial was desired were disposed of.

But we have another rule of court adopted a few years since which has served to reduce the number of pending cases. This provides that cases remaining on the docket for a period of two years or more with nothing done, shall be dismissed for want of prosecution, unless good cause be shown to the contrary. The enforcement of this rule has, in a large measure, swept the dead wood from the dockets.

With the facility therefore with which a case can reach the trial list, if trial is desired, and the certainty of its disappearance from the docket, if there is nothing in it, we might expect that the dockets in our several counties would show a commendable dispatch of business. This is what they do show. I am indebted to the clerks of courts throughout the State

for the following data, covering the past three years, 1910, 1911 and 1912.

These figures give us a resume of the civil trials in the Supreme Court at every term in every county for the past three years. The purpose was to learn how many cases had been tried both by court and jury, exclusive of divorces, and to ascertain how long they had been pending when they were tried. I have not attempted to obtain the data as to the two Superior Courts because it is well known that with their frequent terms their work is well kept up.

Here are the figures:

Androscoggin County

Term of Trial with reference to Term of Entry

Term of Trial	1st.	2nd.	3rd.	4th.	5th.	6th.	7th.	8th.	9th.	10th	Total tried	
1910,												
Jan.		22	12	8	1		1				44	
Apr.	6	18	6		1						31	
Sept.	5	14	3			1					23	
1911,											——	98
Jan.	3	5	1								9	
Apr.	5	15	5	2	1				1		29	
Sept.	1	7	4		1	1	2				16	
1912,											——	54
Jan.	11	19	2	4		1					37	
Apr.	5	11	4								20	
Sept.	5	5	2		1						13	
											——	70
											Total,	222

Aroostook County

Term of Trial with reference to Term of Entry

Term of Trial	1st.	2nd.	3rd.	4th.	5th.	6th.	7th.	8th.	9th.	10th.	Total tried	
1910,												
Apr.		2	4	2							8	
Sept.	1	2	1	1							5	
											——	13
Nov.											No Ct. held.	
1911,												
Apr.			10	2	1						13	
Sept.	2	2	3	1							8	
Nov.		5	5	1							11	
1912,											——	32
Feb.		2	4	2			2				10	
Apr.		3	1	3							7	
Sept.	1	3	4		1					1	10	
Nov.		4	1	1	1		1	1			9	
											——	36
											Total,	81

Cumberland County

Term of Trial with reference to Term of Entry

Term of Trial	1st.	2nd.	3rd.	4th.	5th.	6th.	7th.	8th.	10th.	12th.	Total tried	
1910,												
Jan.		5	1		1	1			1		9	
Apr.			6			1		1		1	9	
Oct.		7		4		2		2			15	
1911,											——	33
Jan.	4	7	2				1				14	
Apr.	11	5	3								19	
Oct.		10	4	1		1					16	
1912,											——	49
Jan.		3	1								4	
Apr.	2	4	4	1							11	
Oct.	6	3	1								10	
											——	25
											Total,	107

Franklin County

Term of Trial with reference to Term of Entry

Term of Trial	1st.	2nd.	3rd.	4th.	5th.	6th.	7th.	8th.	9th.	Total tried	
1910,											
Feb.	1		2							3	
May		4	1							5	
Sept.	1	3		1	1					6	
1911,										——	14
Feb.	1	1		1		1				4	
May			1	2	1					4	
Sept.	1	9	1	1	1					13	
1912,										——	21
Feb.	2	2	1							5	
May			5							5	
Sept.	1	4		1						6	
										——	16
										Total,	51

Hancock County

Term of Trial with reference to Term of Entry

Term of Trial	1st.	2nd.	3rd.	4th.	5th.	6th.	7th.	8th.	9th.	Total tried	
1910,											
Apr.	3	2		1						6	
Oct.		1	1							2	
1911,										——	8
Apr.	4			1						5	
Oct.	1	3								4	
1912,										——	9
Apr.			2							2	
Oct.	2	3	1							6	
										——	8
										Total,	25

Kennebec County

Term of Trial with reference to Term of Entry

Term of Trial	1st.	2nd.	3rd.	4th.	5th.	6th.	7th.	8th.	9th.	Total tried	
1910,											
Mar.	3	6	2	1						12	
Oct.	1		1							2	
1911,										——	14
Mar.		2								2	
Oct.	1	3								4	
1912,										——	6
Mar.	2	3	1							6	
Oct.	2	1								3	
										——	9
										Total,	29

Knox County

Term of Trial with reference to Term of Entry

Term of Trial	1st.	2nd.	3rd.	4th.	5th.	6th.	8th.	12th.	Total tried	
1910,										
Jan.		3	2	1					6	
Apr.		1							1	
Sept.		5	1						6	
1911,									——	13
Jan.				1					1	
Apr.	2	1							3	
Sept.				5				(1-5 yrs.)	6	
									——	10
1912,								(1-5 yrs.)		
Jan.	1	2		1	1	1		(1-7 yrs.)	8	
Apr.		7	1			1			9	
Sept.	1	2	3					1	7	
									——	24
									Total,	47

Lincoln County

Term of Trial with reference to Term of Entry

Term of Trial	1st.	2nd.	3rd.	4th.	5th.	6th.	7th.	8th.	9th.	Total tried	
1910,											
Apr.		2	2		1					5	
Oct.		1	3							4	
1911,										——	9
Apr.		1								1	
Oct.	4	2	1					1		8	
1912,										——	9
Apr.	1	2	2							5	
Oct.	3	2				1				6	
										——	11
										Total,	29

Oxford County

Term of Trial with reference to Term of Entry

Term of Trial	1st.	2nd.	3rd.	4th.	5th.	6th.	7th.	8th.	9th.	Total tried	
1910,											
Mar.		1	1		1					3	
May		6					1			7	
Oct.			1							1	
1911,										——	11
Mar.		4							1	5	
May				1	1					2	
Oct.				1						1	
1912,										——	8
Mar.		1		1						2	
May		1	1				1			3	
Oct.		1	1	3		1				6	
										——	11
										Total,	30

PENOBSCOT COUNTY

Term of Trial with reference to Term of Entry

Term of Trial	1st.	2nd.	3rd.	4th.	5th.	6th.	7th.	8th.	9th.	Total tried	
1910,											
Jan.	1	8	1			1				11	
Apr.	1	7	4	1		1				14	
Oct.	2	6	7	4						19	
1911,										——	44
Jan.		2	2	2						6	
Apr.	2	9	4	1						16	
Oct.	5	15	1	2			1			24	
1912,										——	46
Jan.	4	7		1				(1-4 yrs.)		13	
Apr.	1	4	5							10	
Oct.		4	2	3						9	
										——	32
										Total,	122

PISCATAQUIS COUNTY

Term of Trial with reference to Term of Entry

Term of Trial	1st.	2nd.	3rd.	4th.	5th.	6th.	7th.	8th.	9th.	Total tried	
1910,											
Jan.		1								1	
May		1	1							2	
Sept.			1							1	
1911,										——	4
Jan.			1				1			2	
May										0	
Sept.		2	2	1						5	
1912,										——	7
Mar.		1								1	
Sept.	2		2	1		2		1		8	
										——	9
										Total,	20

SAGADAHOC COUNTY

Term of Trial with reference to Term of Entry

Term of Trial	1st.	2nd.	3rd.	4th.	5th.	6th.	7th.	8th.	9th.	Total tried	
1910,											
Apr.		2								2	
Aug.										0	
Dec.		2	3							5	
1911,										——	7
Apr.		1	1							2	
Aug.	3	1		1						5	
Dec.	8	3		1 (1-4 yrs.; 3rd. trial)						13	
1912,										——	20
Apr.	1	5	1							7	
Aug.	1	1	1							3	
										——	10
										Total,	37

SOMERSET COUNTY

Term of Trial with reference to Term of Entry

Term of Trial	1st.	2nd.	3rd.	4th.	5th.	6th.	7th.	8th.	10th.	Total tried	
1910,											
Mar.		2	8	2	1		1			14	
Sept.			3							3	
Dec.		6	1	1	2		1		1	12	
1911,										——	29
Mar.	2	6	1	1						10	
Sept.		5	2	2						9	
Dec.		7	1	2	2		1			13	
1912,										——	32
Mar.		5	5	1						11	
Sept.		4		3			1			8	
										——	19
										Total,	80

Waldo County

Term of Trial with reference to Term of Entry

Term of Trial	1st.	2nd.	3rd.	4th.	5th.	6th.	7th.	8th.	9th.	Total tried	
1910,											
Jan.		7	1							8	
Apr.	1	4	1	1						7	
Sept.		2		1						3	
1911,											18
Jan.	2	4	1	1	1					9	
Apr.		4		2						6	
Sept.	1	1								2	
1912,											17
Jan.	1	8								9	
Apr.	1	3	1							5	
Sept.	1	7								8	
											22
										Total,	57

Washington County

Term of Trial with reference to Term of Entry

Term of Trial	1st.	2nd.	3rd.	4th.	5th.	6th.	7th.	8th.	9th.	Total tried	
1910,											
Jan.		3								3	
Apr.		3	1	1					1	6	
Oct.	1									1	
1911,											10
Jan.		2								2	
Apr.		2			1					3	
Oct.	2	3	1	1						7	
1912,											12
Jan.				1						1	
Apr.		2	3							5	
Oct.	1	1		2						4	
											10
										Total,	32

York County

Term of Trial with reference to Term of Entry

Term of Trial	1st.	2nd.	3rd.	4th.	5th.	6th.	7th.	9th.	10th.	12th.	Total tried	
1910,												
Jan.		4	1		2	1					8	
May		2									2	
Sept.	1	2		1	1						5	
1911,												15
Jan.	1	11	3	7				1			23	
May		1	1	1	1	1					5	
Sept.		4	1			1			1	1	8	
1912,												36
Jan.	2	15	3	1	2	1	1				25	
May	1	7	2	1				1			12	
Sept.	3	3	5		2						13	
												50
											Total,	101

These tables are instructive.

Taking Androscoggin County as an illustration, it appears that at the January term, 1910, 44 cases were tried. Of these, 22 were tried at their second term, that is, they had been entered at the previous September term; 12 were tried at their third term; 8 at their fourth; 1 at its fifth; and 1 at its seventh.

At the January term, 1912, 37 were tried. Of these, 11 were new entries; 19 were tried at their second term; 2 at their third; 4 at their fourth; and 1 at its sixth.

Combining these tables in all the counties, we find that in 1910 the total number of cases tried in the Supreme Court throughout the State was 340, of

which 28, or 8 per cent. were new entries or tried at their first term; and 167, or 50 per cent. were tried at their second term; so that 195, or 58 per cent. were tried before the end of the second term.

In 1911, the total number tried was 368, of which 56, or 15 per cent. were new entries; 170, or 46 per cent. were tried at their second term; so that 226, or 61 per cent. were tried before the end of the second term.

In 1912, the total number tried was 362, of which 64, or 16 per cent. were new entries; 156, or 43 per cent. were tried at their second term; so that 220, or 59 per cent. were tried before the end of the second term.

And taking the last three years together, out of a total of 1,070 cases tried, 148, or 14 per cent. were new entries; and 493, or 46 per cent. were tried at the second term; so that 641, or 60 per cent. were tried before the end of the second term.

The second term, that is, from three to four months after entry, is when the majority of the cases is tried; and those that scatter along after that time can be accounted for by the peculiar conditions relative to each.

One other fact stands out prominently from this tabulation and that is, the vast amount of business done in Androscoggin and Penobscot counties. Out of a total of 340 cases tried in the State in 1910, Androscoggin County had 98, or 29 per cent.; in 1911, 54, or 15 per cent.; and in 1912, 70, or 19 per cent.

The same is true in Penobscot, where in 1910 it had 16 per cent. of all the trials in the State; in 1911, 13 per cent.; and in 1912, 9 per cent. It must be re-

membered too that this includes only the cases tried at the three civil terms in Penobscot, and does not include the criminal cases tried at the two criminal terms in that county held in February and August.

The members of the Court are always glad to have an assignment in Bangor; but it does seem as if five terms in one county, and long terms too, constitute rather a disproportionate demand upon a court that holds but forty-seven terms in the entire sixteen counties of the State.

If any of you, therefore, are casting about in your minds for some method of lessening the work of the Supreme Court, I would suggest what I have often suggested to members of those two bars before,—a Superior Court for the county of Androscoggin and another for the county of Penobscot. The additional expense would not be great, and the result in Cumberland and Kennebec warrants my firm conviction that, once established in Auburn and Bangor, such courts would fully justify their existence, while the work of the Supreme Court would be materially lightened.

Before leaving this branch of the subject, it might be well to add the following table, showing the total number of civil actions, exclusive of divorces, pending on the dockets of the Supreme Court on the first day of January of 1910, 1911 and 1912.

This table is as follows:

Total number of Civil Actions, exclusive of Divorces, pending in the Supreme Judicial Court:

County	Jan. 1, 1910.	Jan. 1, 1911.	Jan. 1, 1912.
Androscoggin,	227	282	277
Aroostook,	1,104	1,443	1,030
Cumberland,	68	55	93
Franklin,	226	160	112
Hancock,	191	173	225
Kennebec,	117	95	109
Knox,	194	184	191
Lincoln,	83	88	85
Oxford,	193	158	160
Penobscot,	512	471	551
Piscataquis,	140	150	193
Sagadahoc,	58	53	71
Somerset,	394	419	400
Waldo,	144	125	126
Washington,	245	219	208
York,	271	240	239
Total,	4,167	4,315	4,070

These totals show that the general volume of litigation has been rather constant during the last three years; the number pending on January 1, 1910, being 4,167, on January 1, 1911, 4,315, and on January 1, 1912, 4,070.

It is interesting to note in this connection that while the total number of civil actions, exclusive of divorces, pending in the Supreme Court in the entire State of Maine on January 1, 1912, was 4,070, this is only a little more than one third as many as were pending in Suffolk County, Massachusetts, on June 30, 1912, viz., 11,092.

II. CAUSES IN EQUITY.

Here, again, we need to study the conditions in our own State, and not to draw too many inferences from the situation elsewhere.

The old English Court of Chancery is typefied in Jarndyce vs. Jarndyce, but in some respects the antiquated equity procedure in the Federal Court has been deserving of a similar criticism. The Equity Rules in that Court had not been revised since 1842, but had remained substantially as they were in the days of "Tippecanoe and Tyler too," until remodelled this last year by the Supreme Court of the United States. It is no wonder that President Taft called attention to the situation in his message to Congress a year ago. Those rules had lived unchanged the allotted age of man, three score years and ten; and under them, as an illustration of the outgrown provisions, the entire evidence in equity causes could only be taken on depositions, not by oral evidence produced before the Court; and as a result, a case could be delayed interminably by the taking of depositions from the Atlantic to the Pacific.

That was the practice in Maine when I came to the bar in 1880, but at that time equity cases were few and far between. In 1881, the equity practice act was passed, extending the scope and at the same time simplifying the procedure, so that for the past thirty years much of the procedure which the Federal Court has but recently adopted has been in vogue in this State.

Our equity rules have also been frequently revised in order to meet the growing demands, and in fact

our rules of court have been so often modified and supplemented in recent years, that some of the more critical of the bar have been heard to slyly ask whether any new rules had been promulgated since the previous session.

It is undoubtedly true that the volume of equity work has increased substantially during the past ten years, and is constantly growing, especially at the centers where so many corporations are organized under our general laws. The fact that every corporation so organized has its legal residence in this State, although its stockholders may reside and its business be entirely carried on in another state or country, adds a considerable burden to the equity side of the court. If any misfortune befalls the corporation itself, or any quarrel arises among the stockholders, resort is had to the court of Maine, although not a single party interested resides here, nor a single dollar's worth of corporate property is within our borders.

Still our equity practice is so simple, and so well calculated to reach speedy results, that no unreasonable delay need be permitted, and the work in this branch is well kept up.

I have prepared the following table, showing the number of equity causes pending in each county ten years ago, five years ago, three years ago and at the present time, (or to be more accurate on December 12, 1912, the date at which the figures were made up:)

Number of Equity Cases Pending, 1903-1913.

County.	Pending, Jan. 1, 1903.	Pending, Jan. 1, 1908.	Pending, Jan. 1, 1910.	Pending, Dec. 12, 1912.
Androscoggin,	8	21	2	33
Aroostook,	15	17	19	24
Cumberland,	90	156	155	204
Franklin,	6	11	10	3
Hancock,	103	105	32	54
Kennebec,	112	73	68	118
Knox,	20	27	31	21
Lincoln,	11	9	9	12
Oxford,	9	14	13	7
Penobscot,	137	182	60	83
Piscataquis,	20	42	23	26
Sagadahoc,	23	19	21	29
Somerset,	30	29	24	22
Waldo,	14	18	18	15
Washington,	39	26	18	22
York,	48	85	67	72
Total,	685	834	570	745

This table makes the total number pending January 1, 1903, 685; January 1, 1908, 834; January 1, 1910, 570; and today, 745.

A slight numerical increase during the ten years, but this table alone is not an accurate measure of the equity work really done.

The amount of time required of the Court in this branch has increased in far greater proportion than the number of causes.

III. THE CRIMINAL DOCKET.

We pass next to the dispatch of criminal business. Here is said to be a field for wide-spread and drastic criticism in many parts of our country; and the trial of Dr. Crippen in England for murder in 1910 is held up before us as a shining example of how a criminal trial should be conducted. In that case Dr. Crippen was indicted on October 12, his trial began on October 18, he was found guilty on October 22, his appeal was heard and decided in less than two weeks after conviction, and on November 26 he was executed.

This certainly was speedy retribution. But, in considering that case, it is but fair to say that it is doubtful whether the bar or the public in this country would uncomplainingly submit to the overshadowing part which the presiding judge plays in an English criminal trial. No statute of 1874, such as we have in Maine and in many other states, exists there to deter the judge from expressing an opinion upon the issues of fact; and if any of you followed the course of that trial in the English papers, you must have been impressed with the difference. In fact, it is not unusual for the members of the English bar to say, "Judge——tried the case of Rex vs. Jones," instead of saying "the case of Rex vs. Jones was tried before Judge——," and the form of expression is most apt. And yet the rights of the accused in England are carefully guarded.

But illustrations are not wanting of speedy trials in our own State, although they have not attracted so generally the attention of the press and the people.

On Christmas eve, 1911, a man was killed in a brawl in Knox County. The offender was indicted for murder the following week, was tried the next week, convicted of manslaughter after a two days' trial, sentenced to imprisonment for five years and committed to State Prison on January 14, or 15,—all within three weeks.

On September 14, 1911, a felonious assault was committed upon a child in Somerset County; on September 19, the offender was indicted; was tried, convicted, and sentenced to State Prison on September 24,—all within ten days.

At the September term, 1911, of the Supreme Court in Franklin County, the grand jury returned during the first week four indictments for murder, one being against two respondents.

On two of these indictments, the respondents pleaded guilty as charged and were sentenced to imprisonment for life. On Monday of the following week, trial on the indictment against the two was begun, and it was finished on Tuesday evening, with a verdict of guilty as charged. No appeal was taken and sentence of imprisonment for life was immediately pronounced.

On Wednesday morning, the trial on the fourth indictment was begun and finished on Thursday evening, with a verdict of manslaughter. There was no appeal and sentence was pronounced. Four murder cases were disposed of in four days, and two actual trials had consumed two days each. In marked contrast, let me add that during this very time and for weeks before and weeks after, the court in Los Angeles, California, was endeavoring merely to secure a jury in the dynamite cases.

At the last October term in Kennebec County, the famous Mattie Hackett murder case was tried. It attracted unusual attention, not only in this county but throughout the State and New England. Yet at the forenoon session of the first day, and within three hours after the case was called, a jury was impanneled and the opening address made by the County Attorney. The case was concluded and a verdict rendered in eight days, although 87 witnesses were called and examined.

These are illustrations which might be multiplied; and when we pass from single instances to the criminal business as a whole, we all know from our common experience that all cases of prisoners in jail awaiting trial are disposed of at the first term, and that as a rule all criminal cases which are ready for trial are tried at that term.

Mr. Dooley with characteristic overdrawing of the picture, in his recent reflections on trial by jury in England and in this country, makes the English judge charge the jury in a criminal case as follows:

"Pris'ner at the bar, it is now me awful jooty to lave y'er fate to a British Jury. I will not attimpt to infloonce thim in anny way. I will not take the time to brush away the foolish ividence put in in ye'er definse. Ye'er lawyers has done as well as they cud with nawthin to go on."

He then portrays a criminal trial in this country by way of contrast as follows:

"Th' pris'ner is brought into court, smilin' an' cheerful, the flashlights boom, th' cameras click, th' ladies swoon, and the judge says with a pleasant smile: 'It is me dhread jooty to sintince ye to the Coort of Appeals. Long life to ye.'"

There is more than a kernel of truth in these two pictures, but apropos of this, I have secured data as to all the homicide trials in this State during the past three years, the number, the verdict, the number of appeals, and the result of those appeals.

This table follows:

Table of Homicide Trials

1910, 1911, 1912

County	No. of Trials	Verdicts Guilty	Verdicts Not Glty.	Appeals	Verdicts set aside	Verdicts sustained
Androscoggin,	0	0	0	0	0	0
Aroostook,	3	2	1	1	0	1
Cumberland,	1	1	0	0	0	0
Franklin,	4	4	0	0	0	0
Hancock,	0	0	0	0	0	0
Kennebec,	3	2	1	0	0	0
Knox,	2	2	0	1	0	1
Lincoln,	0	0	0	0	0	0
Oxford,	3	3	0	1	0	1
Penobscot,	1	0	1	0	0	0
Piscataquis,	0	0	0	0	0	0
Sagadahoc,	1	1	0	0	0	0
Somerset,	2	1* (1)	0	0	0	0
Waldo,	2	0	2	0	0	0
Washington,	2	2	0	0	0	0
York,	3	2	1	0	0	0
Total	27	21	6	3	0	3

*1 pl. guilty less offence.

In the 27 homicide trials held during the past three years, twenty verdicts of guilty have been rendered. Of these, only three were carried to the Law Court, and not one of these was reversed. It is evident that the repeated re-trials, so much complained of as a fruitful source of delay in many sections, do not obtain here in Maine.

In this connection, I have had the curiosity to ascertain how many criminal cases of all kinds have been carried to the Law Court on exceptions, motion or writ of error, from all the counties of the State, during the past eight years, as appears from the last ten volumes of our Law Reports.

The result is:

Total number of criminal cases carried to Law Court, - -	50
Number of appeals overruled, -	39
Number of appeals sustained, -	11

This does not include cases carried up on report or on agreed statement of facts, nor does it include those for a part of this period in which decisions were rendered in a per curiam rescript, as these memorandum decisions were not reported until the 106th Maine Report. But these would undoubtedly increase the proportion of cases where the motion or exceptions were overruled.

With a total of only eleven new trials granted in all criminal cases in eight years, there certainly seems to be no lamentable delay in this State arising from mis-trials and appeals.

IV. THE LAW DOCKET

The last point to be considered is that of appeals to the Law Court, both in civil and criminal cases. In other jurisdictions, especially where, as in New York, the system of Appellate Courts is rather complicated, the loudest complaint comes from this quarter.

I have just spoken of criminal appeals in another connection. Mr. Moorfield Storey, in his most interesting and instructive course of lectures delivered before the Yale Law School in 1911 on "Reform in Legal Procedure," cites the following as an illustration of what is possible under the New York system:

"A Borough President, in New York, summarily removed a chief of bureau, and the latter questioned his power to do it without a hearing. One would say that the question was simple, and that it should be determined at once. Yet the case which the removed officer brought to test the question had forty-seven hearings at Special Terms of the Supreme Court, twenty-one hearings at trial terms, eight appeals were heard and decided in the Apellate Division and two in the Court of Appeals. At the end of six years, three unheard appeals were pending; and $38,000 of back salary depended on the final decision, while the cost of litigation to taxpayers was even more."

So much for New York. A similar question arose in this State in Biddeford in 1899, where the Board of Police removed a member of the force without a hearing. Here it was regarded "as a simple question," which was raised on a petition for writ of certiorari.

The case was taken to the Law Court on report, and one decision, rendered in a few months, settled it (Andrews vs. Police Board, 94 Maine 68.)

A more recent illustration occurs to me in the Knox County Register of Probate election case of Benner vs. Payson. The petition to test the title to office was brought in late November, 1912; the evidence taken out on December 2; argued in the Law Court on December 18; and decision announced on January 7, 1913.

It is true that a few cases remain in the Law Court for a considerable length of time after they are argued; but they are in fact few, and usually there is some good reason for the apparent delay. We should judge of the work not from scattering and isolated cases, either of unusual speed or of unusual delay, but from the volume of work as a whole.

Prior to 1901, the three sessions of the Law Court were held in the summer season, after the nisi prius work of the year had finished; one session being held at Augusta in May, for the middle district, at Bangor in June for the Eastern District, and at Portland in July for the Western District. The practical effect of this was to give one Law term a year for each section of the State. In 1901, this plan was changed, and the entire State was constituted a single district; with one term at Bangor on the first Tuesday of June, one at Portland on the fourth Tuesday of June, and one at Augusta on the second Tuesday of December. The effect of this has been that the cases appealed from the winter and spring nisi prius terms can be heard at one of the two ensuing summer terms of the Law Court, and the cases

appealed from the fall nisi prius terms, if they can be printed, can be heard at the December Law Court; and if they go past one law term, they wait six months for hearing, instead of a year. In other words, there is a session of the Law Court once in six months instead of once a year; and this has tended to expedite greatly the hearing and decision of appealed cases.

The volume of law work during the past three years is shown from the following table which gives the total number of cases either argued orally or marked in writing at each of the three law terms:

Table of Law Cases Argued.
1910-1911-1912.

Terms.	Number.	Total for year.
1910.		
Bangor Term,	17	
Portland Term,	83	
Augusta Term,	55	155
1911.		
Bangor Term,	16	
Portland Term,	69	
Augusta Term,	57	142
1912.		
Bangor Term,	24	
Portland Term,	103	
Augusta Term,	42	169
Total for 3 years,		466
Average per year,		155

With what speed is this Law work handled?

I remember that three years ago substantially every case that had been argued at the June Law Court in Portland was decided before the December Law Court in Augusta; but in order to be more specific, I have prepared the following table, which practically explains itself.

Taking the Portland Law Docket of 1912 as a starting point, I have traced out the disposition of the cases which remain undecided at the beginning of that term, many of which had been argued at the Bangor term, held only three weeks before, and also of all the cases argued orally or marked in writing at the Portland term, which was an unusually heavy one.

The figures for each county are as follows, (two cases argued together and requiring but one opinion being treated as one:)

Portland Law Docket, 1912

COUNTY	*Cases argued and pending* at beginning of Portland term.	*Cases argued at Portland* orally and in writing.	*Total* at end of Portland term.	*Decided* before end of Augusta December term.	*Undecided* before end of Augusta December term.	REMARKS
Androscoggin,	2	25	27	22	5	(1 Papers not in.) (2 Opinion not concurred in.) (2 No opinion.)
Aroostook,	5	6	11	11	0	
Cumberland,	3	19	22	19	3	(1 Papers not in.)
Franklin,	4	0	4	2	2	(1 Op. drawn; not concurred in.) (1 Papers not in.)
Hancock,	3	4	7	3	4	(2 Papers not in.)
Kennebec,	7	6	13	10	3	(2 Papers not in.)
Knox,	1	9	10	7	3	(2 Papers not in.)
Lincoln,	0	5	5	3	2	(1 Op. drawn; not concurred in.) (1 Papers not in.)
Oxford,	0	1	1	1	0	
Penobscot,	5	4	9	5	4	(1 Papers not in.)
Piscataquis,	2	1	3	2	1	
Sagadahoc,	1	6	7	6	1	(1 Op. disag.)
Somerset,	0	7	7	5	2	
Waldo,	3	0	3	2	1	
Washington,	3	2	5	4	1	
York,	3	8	11	5	6	(5 Papers not in.)
Total,	42	103	145	107	38	
				Deduct	16	in which papers are not in,
				leaving	22	not announced.
				Deduct	5	op. drawn, but not concurred in,
				leaves	17	in which no opinions had been completed.

The result is that of the 145 Law cases argued and pending at the conclusion of the Portland Law Term on July 23, 1912, 107 were decided before the end of the December Term in Augusta, December 19th. Of the remaining 38, 16 had been marked to be argued in writing, but the papers, either record, or one or both briefs, had not been received; and therefore they could not be decided. Of the remaining 22, opinions have since been announced in 16, leaving only 6 unannounced.

This presents a fair picture of the expedition with which the Law work as a whole is taken care of in this State. I give you the facts and figures; you can draw your own conclusions. This article is not designed as an argument, but simply as a statement of facts and conditions. I thought it proper and timely that the facts and figures as shown by the dockets and records of the Court should be collated and presented; and I have endeavored to do so.

And here let me say that if the title of this paper is not a misnomer, and if the "Law's Dispatch" rather than the Law's Delay prevails in Maine, credit must be given to the bar as well as to the bench. It is the lawyers who control in a large measure, under any system and under any procedure, the celerity or the delay with which their clients' causes are pushed to a final result.

A single word in conclusion.

From the fact that this paper has to do wholly with the subject of expedition in Court procedure, I beg of you not to infer that I deem this feature of prime and overshadowing importance. On the contrary, I regard the *right*, rather than the *quick* decision to be

the desired goal. Whether the final result be reached in six weeks, or six months, is not in the great majority of cases so important as that the result, when reached, shall be correct and just.

I have presented this secondary aspect because it seems of late to be so much in the public eye, but with, I trust, a full sense of the true perspective.

You remember the reply of Rufus Choate to Chief Justice Shaw in the Law Court in Massachusetts, when Mr. Choate called up an important case for argument one afternoon and the Chief Justice, who may not have been feeling well that day, said that the Court could give him just twenty minutes in which to present his views. Mr. Choate replied that it would be impossible for him to adequately present his case in that brief time, and that he would drop in again when he hoped he might find the Court sitting for the administration of justice rather than for the dispatch of business.

The happy mean is always to be desired, and business in Court is to be transacted with reasonable dispatch, but always with due regard to the rights of the parties and the public, and the attainment of just results.

Nor would I have you infer that this address is written in an attitude of that smug complaisance which scouts at all attempts at improvement. Such an idea is furthest from my mind. Improvements are always possible in human affairs. Many have been effected in recent years in Court procedure in Maine, many more doubtless could be made with advantage. But we must not forget that change is not necessarily improvement, and that movement is not always progress.

Every real advancement you and I must readily welcome; for my friends, your duties and mine, you on one side of the bench and I on the other, should be in perfect harmony. We are all officers of the Court and servants of the people, engaged in a common task, endeavoring as best we may to work out substantial justice, that invisible but none the less real and eternal something for which governments are organized and courts of law and equity are maintained.

(Hearty applause.)

THE PRESIDENT: Under No. 7 we will listen to an address by Hon. Robert Treat Whitehouse, subject "Divorce." Mr. Whitehouse delivered his address as follows:

ADDRESS OF

HON. ROBERT T. WHITEHOUSE

Divorce

"Whom God hath joined together let no man put asunder," such is the impressive ending of the Episcopal Marriage Service. Yet we are putting asunder in this country year after year some hundred thousand men and women thus solemnly joined. What is the meaning of this? Is it simply the latter day manifestation of a system which has existed in a proportionate degree for all time, and which has been found necessary for the best regulation of society, or is it a symptom of degeneracy peculiar to modern civilization?

For an answer let us briefly review the history of divorce in various countries.

HISTORY.

The ancient Hebrews were in the habit of putting away their wives practically at pleasure and with very little ceremony. Among the early Greeks divorce existed with very little formality except declaring the intention to witnesses in the case of the husband, and by a petition to the Archon setting forth the causes in the case of the wife. Mutual consent was sufficient. In Rome for a hundred years,

it is said, before the victories over Carthage and the extension of the Roman Empire in Greece and the East with the luxury and corruption which followed, divorces were not known. But as soon as the old rigor or family life passed away toward the end of the Republic, public opinion ceased to frown on divorce and it became exceedingly common, disgraceful instances of repeated divorce and remarriage occurring among the Emperors themselves. Divorce could be brought about by common consent on the action of either party. Carinus has a record of nine wives married and divorced.

The substance of Christ's teaching as shown from certain passages in the Scriptures stated as a general principle is that husband may be absolutely divorced only on the ground of adultery and when so divorced only the innocent party may marry again. Christian views had some influence upon Roman married life, but effected no very radical change. The doctrine of the Christian Catholic church grew to be that the marriage tie was sacred and could not be completely dissolved during life, but the parties could merely be separated without the right to remarry. During the period of the Reformation in those countries which continued in this church no change was made in the laws of divorce handed down from the middle ages. In the Protestant church, however, the more liberal views grew up and toward the end of the 17th century marriage began to lose its religious and moral character and came to be regarded more as a contract controlled by the state with a view to expediency and social welfare. These new views found their first expression in Germany and in 1751 under

Frederick the Great, divorce was allowed by mutual consent but under the code which followed soon after and has continued in force up to the present time, causes of divorce were adultery, desertion, cruelty, drunkenness, failure to support, insanity and deliberate mutual consent where there are no children, the divorced parties being allowed to remarry.

In France the Canon Law of the Catholic church prevailed until the Revolution in 1792 when divorce by a mutual consent was allowed, but such a flood of divorces followed that this was changed and from 1816 to 1883 absolute divorce was not allowed. Since 1883, absolute divorce has been allowed for adultery, conviction of crime and cruelty.

England followed the Canon Law from a very early period and absolute divorce was not known except by occasional private acts of Parliament and the power of absolute divorce was not given to the courts until 1857 when jurisdiction in the matter was given to a separate court for divorce and matrimonial causes. Absolute divorce was allowed for adultery, gross cruelty and desertion, and the parties were allowed to remarry. The Royal Commission appointed in England to examine into the advisability of relaxing the divorce laws has recently made its report and the majority report recommends that divorces may be obtained for unfaithfulness, desertion, cruelty, incurable insanity, habitual drunkenness, and imprisonment under commuted death sentence. It further recommends that divorce proceedings may be instituted in the lower courts, instead of only in the highest court, as now—this in the interests of the poor. It also puts forth the wise suggestion that newspaper

reports of divorce proceedings be restricted, and that judges shall hear such cases without a jury. The minority report disagrees chiefly as to the extension of the grounds for divorce. Heretofore divorce in England has been open only to the very rich owing to the high cost of bringing suit in the highest court to which only the most expert lawyers really have access. The system was inequitable in that it granted divorces to that portion of the community who should logically have the most opportunity to make a success of life, while those beneath, who more vividly felt life's grind, were denied it. It still remains to be seen whether the majority report will be adopted in full or not.

United States.

In the United States there is no national law of divorce, and it is not a part of the common law. Each state enacts its own laws, consequently the divorce laws of the Union are in a chaotic condition. There are forty-three different causes of nullity and divorce proper in the several states ranging from no divorce from any cause whatever in South Carolina to fifteen causes in Kentucky and from the scriptural ground on the one hand to incompatibility of temper and the discretion of the Court on the other, or as some one has put it, from murder and arson in one state to impoliteness in the next.

In South Dakota which has acquired fame for its facilities for untying the knot while you wait there is nothing unusual in the causes of divorce, but the secret of the prominence of that state in these mat-

ters has lain in the fact that previous to 1893 only ninety days' residence was required there before being allowed to obtain a divorce, and though this term was subsequently lengthened, the time still required is only one year so that parties from states like South Carolina or New York where there are few causes of divorce have in times past and still do to a certain extent, take up their pilgrimage to South Dakota as the Mecca of matrimonial mutations.

Divorce there used to be regarded as rather a state industry like raising wheat and was boomed like other state features and attractions. Chicago was said to be jealous of Sioux Falls and Sioux Falls itself was said to be disturbed somewhat at one time over the competition of Yankton. A new hotel had been erected there designed especially for colonists "doing time." Since South Dakota changed her residence period, necessary to jurisdiction, to one year, the halcyon days of divorce in that state have passed to yield the palm to Nevada where 6 months jurisdictional residence and a one year desertion clause have made famous the celebrated divorce colony of Reno.

Causes of Divorce in Maine.

The present causes of divorce in the State of Maine are adultery, impotence, extreme cruelty, utter desertion continued for three consecutive years, gross and confirmed habits of intoxication from the use of intoxicating liquors, opium or other drugs, cruel and abusive treatment, or on the libel of the wife, where the husband being of sufficient ability or being able to labor and provide for her, grossly or wantonly and

cruelly refuses or neglects to provide suitable maintenance for her, provided, that the parties were married in this State or cohabited here after marriage, or if the libellant resided here when the cause of divorce accrued, or had resided here in good faith for one year prior to the commencement of proceedings (or if the libellee is a resident of this State.) But when both parties have been guilty of adultery, or there is a collusion between them to produce a divorce, it shall not be granted. Either party may be a witness.

Of these causes, cruel and abusive treatment is the weakest point since it can be made elastic enough to cover a great number of annoyances or troubles between the parties provided that they will swear that such conduct impaired or threatens to impair mind or body. This practically amounts in practice to divorce at the discretion of the court provided the judge is really satisfied that the parties can no longer live together in harmony and that a divorce is the best thing for them and for society in general he is likely to grant it.

Extracts from Libels.

Having obtained some idea of the statutory causes it may be interesting as well as instructive to give some extracts of libels as showing the slight evidence that is sometimes held sufficient to support the statutory causes in various courts of the United States. The extracts are taken verbatim from the official papers. They are not however from the State of Maine, but largely from Western States.

1. The defendant has frequently evinced toward this plaintiff a hasty temper.

2. The defendant struck plaintiff a violent blow with her bustle.

3. The defendant violently upbraided this plaintiff and said to him that he was no man at all, causing him mental suffering and anguish.

4. The defendant keeps this plaintiff awake most of the night talking and quarrelling and trying to get him to convey his property to her.

In Japan or China this man might have obtained a divorce on the ground of loquaciousness on the part of his wife.

From husband's testimony: "My wife refuses to keep my clothes in repair; she even refuses to cook and never sews my buttons on." A witness testified that he had seen the plaintiff with but one button on his, the plaintiff's, vest, and that he had heard the defendant say that she would not allow the plaintiff, her husband, to go to fires at night. The obliging California Judge declared this to be cruel and inhuman treatment on the part of the wife, and granted the divorce prayed for.

FROM THE LIBEL OF THE WIFE.

1. During our whole married life my husband has never offered to take me out riding. This has been a source of great mental suffering and injury.

2. Defendant treats plaintiff with great and unmerited contempt and contumely, having said to her that he did not care whether she left him or not.

(The foregoing records were adjudged to be cruel and inhuman treatment as it caused mental anguish; a divorce was accordingly granted.)

3. The defendant has been guilty of cruel and inhuman treatment in this, he has not permitted this plaintiff to walk on the streets with her relations and on one occasion he, the defendant, called this plaintiff a rip, causing her mental anguish.

4. The defendant for the past three years has been in the habit of kicking this plaintiff out of bed and compelling her to seek rest on the floor.

5. The defendant fancies himself a spiritualistic medium and declares that he cannot develop fast enough while living with the plaintiff, which declaration of the defendant caused this plaintiff mental anguish.

STATISTICS OF DIVORCE IN THE UNITED STATES.

Let us now examine some of the general statistics of divorce in the United States. The special statistical report on the subject of divorce ordered by Congress was in 1887 and there has been no official report from the United States published since that time. This shows that in the twenty years between 1867 and 1886 there were 328,716 divorces granted in the United States. The number of divorces decreed annually increased from 9,937 in 1867 to 25,535 in 1886 or an increase of 156 per cent. in that time. The same rate of increase would give about 55,000 for the year 1903.

The census reports for 1890 and 1900 give some valuable information in regard to divorce by com-

parison, although the report says that these figures as to divorce are not absolutely accurate since many divorced people get reported as single. Moreover, the figures report the number of divorced persons only, many of whom of course became divorced in previous years and some of whom obtaining a divorce in the year 1900 were remarried forthwith, possibly in the same year. Consequently we get no information as to the number of *divorces* granted in the year 1890 or 1900, but comparison of the number of divorced persons in existence in the two years will give a fair idea of the rate of increase. The census of 1900 reports 198,914 divorced persons in the United States (Mainland) in that year or 1-4 of one per cent. and 27,770,101 married persons or 36.5 per cent. out of a population of 75,994,575 as opposed to 120,996 divorced persons, or 1-5 of one per cent. and 22,331,424 married persons or 35.7 per cent. of the population of 62,831,900 in 1890. This *shows an increase of 77,918 or 65 per cent. of divorced persons in the ten years as opposed to an increase of only 5,448,777 or 24 per cent. in the number of married persons.* The population during that period increased 13,162,675 or 21 per cent. There was one divorced person in the country to every 144 married persons in 1900, as opposed to one divorced person to every 185 married persons in 1890. Or to put it another way, the number of divorced persons in 1890 was .7 per cent. of the number of married persons, while in 1890 it was only .5 per cent. In both 1890 and 1900 there were nearly twice as many divorced females reported as males showing, it would seem, that many more males remarry than females. In 1900 Maine had one di-

vorced person to every 79 married, New Hampshire, one to 65, Vermont, one to 86, Massachusetts, one to 165, Rhode Island, one to 92, Connecticut, one to 139, and South Dakota, one to 126. As to races the foreign whites had the lowest ratio of divorce, the percentage being .4 of one per cent. owing of course to their being subject to the church or Catholic doctrine of divorce, while the negroes had the highest, or 1.2 per cent.

A comparison of statistics of divorce in the United States with those of European and other countries may be interesting and suggestive. It is said that every year since 1870 the number of divorces in this country has been double that of all other European countries put together. This statement is borne out by the recent tabulation published by Professor William B. Bailey, Assistant Professor of Political Economy in Yale. According to the figures of Professor Bailey the average number of divorces annually for the five years ending 1903 in the United States was 55,502, while the total number in all other European countries combined, with the exception of Russia, was 23,936. The largest number in any country was Japan where it was 93,944, which is accounted for perhaps by the peculiar attitude toward marriage prevalent in that country.

Statistics in Maine.

The following statistics of marriage and divorce in the state of Maine will be found exceedingly interesting and suggestive:

Number of Marriages and Divorces, 1892-1911

	Marriages	Divorces	Ratio of Divorce to Marriage					
1892	5,726	552	1	Div.	to	every	10.4	marriage
1893	5,795	627	1	"	"	"	9.2	"
1894	5,591	674	1	"	"	"	8.3	"
1895	5,729	681	1	"	"	"	8.4	"
1896	5,579	668	1	"	"	"	8.3	"
1897	5,331	722	1	"	"	"	7.4	"
1898	5,144	764	1	"	"	"	6.8	"
1899	5,329	790	1	"	"	"	6.7	"
1900	5,482	801	1	"	"	"	6.8	"
1901	5,735	808	1	"	"	"	7	"
1902	5,905	905	1	"	"	"	6.5	"
1903	6,200	946	1	"	"	"	6.8	"
1904	6,208	906	1	"	"	"	6.6	"
1905	6,264	848	1	"	"	"	7.4	"
1906	6,498	787	1	"	"	"	8.3	"
1907	6,380	887	1	"	"	"	7.2	"
1908	5,904	904	1	"	"	"	6.5	"
1909	6,011	957	1	"	"	"	6.3	"
1910	5,900	911	1	"	"	"	6.4	"
1911	5,878	985	1	"	"	"	6	"

These figures it will be seen show an increase in the number of marriages from 5726 in the year 1892 to 5878 in 1911, or an increase of only 2.6 per cent. in the 19 years, whereas the number of divorces during the same period increased from 532 in the year 1892, to 985 in 1911, or an increase of 85 per cent. in the 19 years, whereas the population during the ten years preceding 1900, increased from 661,086 to 694, 466 or 33,380, which is an increase of only 5 per

cent. Again the ratio of divorces to marriages increased with some fluctuations from one divorce to every 10.4 marriages in 1892 to one divorce to every 6 marriages in 1911—the highest divorce rate ever reached in the history of the State. So that practically today, one out of every six marriages proves a failure and results in divorce.

In the year 1911, out of the 985 divorces granted 268 or 27.2 per cent. were granted for cruel and abusive treatment; 299 or 30.4 per cent. for desertion; 135 or 13.7 per cent. for intoxication; 129 or 13.1 per cent. for adultery; 43 or 4.4 per cent. for failure to support, and 39 or 4 per cent. for extreme cruelty. The other divorces were granted for combined causes. Thus it is seen that cruel and abusive treatment which is the ground most easily expanded and which amounts to practically the discretion of the court, comprises nearly one-third of all the divorces granted, and the two causes of cruel and abusive treatment, and desertion comprise 567 or more than five-ninths of the 985 divorces granted. Out of these 985 divorces the wife was libellant in 670, the husband in 241, or in other words, over 68 per cent. of the divorces granted were upon the wife's petition. It is interesting to note further that two divorces were granted before the married life had lasted six months and 20 before one year. The largest number of divorces granted was after between five and ten years of married life. 83 were divorced after from twenty to thirty years of married life and 27 after more than thirty years. The highest rate of divorce in the Union in 1887 (when the last official report was made) nowhere exceeds one to seven.

The only explanation of this that I can find is that Maine is a state to which persons go from New York and other jurisdictions with fewer and less elastic causes, since the statutes here only require that the parties should have cohabited here before the bringing of the libel or that one of them should have resided here in good faith for one year previous to filing libel.

PRESENT STATUS OF DIVORCE LAWS.

Having thus examined at some length the statutory causes of divorce in the United States, the evidence for which many divorces are granted and statistics on the subject, we are now in a better position to sum up the present status of divorce laws in this country. It would seem in the light of the above facts that owing to the statutory causes of desertion and the elastic interpretations of the cause of cruel and abusive treatment, divorce can practically be obtained by any husband and wife in the United States today by mutual consent, at the discretion of the Court, and in some Courts at the election of either party.

First as to mutual consent, where eight states give right of divorce for one year's desertion, one state for six months' desertion and two states for such a period of desertion as the Court shall deem sufficient, what does this amount to but mutual consent? The parties separate for six months or a year and then apply for and obtain a divorce which gives them the right to remarry. It is in effect exactly the same as if the parties obtained a divorce nisi today by mutual

consent to be made absolute on petition in six months or a year. The same may be true of non-support as has been shown, although not to so great an extent. Moreover, since these same states which have short desertion causes only require in most states a previous residence of one year, or in Nevada 6 months, this privilege is open to any couple in any state if desertion is not a statutory cause in their own state or if they do not care to reside the three or five years which some states require. The weakest link practically measures the strength of the chain. It will be noticed from the above statistics that 38 per cent. of the divorces are obtained on this cause of desertion alone.

Again the cause of cruel and abusive treatment is stretched so far in some of our western Courts that it practically means at the election of either party. What wife is there whose husband cannot charge her with failure to sew on his buttons or with having a hasty temper, or something equally flagrant? What wife is there who could not if she tried hard find a worse fault in her husband than failing to take her to ride or saying in a quarrel that he didn't care whether she left him or not? Is it too much to say that such administration of the law renders marriage a mere civil contract dissolvable at the will of either party?

Now then the question is are we prepared to face these things as they are and stamp them openly with our approval? Would we consent to place these causes on our statute books in their real form as they exist in practice, "Mutual consent, discretion of the Court" and in some jurisdictions "the will of either

party?" In short then we come at last to the inquiries with which we started out and which we are now perhaps better qualified to attempt to answer, viz.: Is this as it should be—Are easy grounds for divorce and large numbers of divorces dangerous to the welfare of society? Is this a condition which has always existed in a proportionate degree and which is necessary to the best interests of society, or is it peculiar to modern civilization and a symptom of degeneracy? If the former, what is the cause of the present increase? If the latter, what is the remedy?

(Easy and frequent divorce is not necessarily a symptom of degeneracy.) In the first place we have found from history that divorce as an institution is not peculiar to modern civilization but has existed in some form and to a varying extent for all time. We have also, it is true, found that free divorce laws and large numbers of divorces have at times been found coincident in the history of certain peoples with periods of immorality and licentiousness. The Macedonian or Roman periods of Greek history which are the most noted for their immorality also show absolute freedom of divorce. The last days of the Roman Republic and early part of the Empire which are most noted for their licentiousness furnish the most disgraceful examples of free and repeated divorce even in the highest ranks of society. But what does this coincidence indicate? Is the freedom of divorce a cause or an effect? It seems to me that these periods of free divorce above noted in history have simply been a concomitant and an outcome of the licentious tendencies of a given people or race at that particular period, which tendencies are the re-

sult of deeper causes than the mere existence of certain laws as to divorce. Times and altering conditions, external or internal, change the mode of living and the character of a people, for instance in the case of Rome, conquest and nearly unlimited power removed the necessity for the former discipline of the Romans. The introduction of Eastern customs and luxuries relaxed the rigidity of Roman life. Rome had been reared upon the family as a basis and for a century divorce in Rome was not known, but when the barriers of former custom began to break down and men began to give free rein to their passions and indulgence to all desires, the strict ties of family life at once became irksome and began to give way and looser divorce laws were sought to make the way easier. But these divorce laws were merely the expression of the existing will of the people, which will expressed itself at the same time as much in the form of adultery as in unbridled divorce. Easy and numerous divorces, therefore, *may* be the result of an existing immoral tendency in a people. But may it not also be the result of other and deeper evolutions and tendencies which are not immoral, as in the case of the large increase of divorce by mutual consent at the time of the great upheaval for individual liberty and independence during the French Revolution in 1792? We are confronted today by the fact of a tremendous increase of divorce in both Europe and America and by a still greater increase in America than in Europe. (It is said that every year since 1870 the number of divorces granted in this country has been double all the divorces of Europe put together.) Now what is behind this

movement? In Rome it was a change of conditions. So, it seems to me, the chief cause of the modern movement toward divorce lies deep in the changed conditions of our civilization. The past four centuries have been the ages of individualism. It has been one long record of the development of the individual in society, his liberty, equality and rights. And to no one class has this tendency been a more revolutionizing factor than to women and especially married women. In more primitive days, the position of women was one of great dependency. The husband was lord and master, the wife's condition was that of absolute subservience. She had no resources. She must please her husband, for in him lay her only hope of subsistence. The world at large offered her none. The division of labor between husband and wife was very rigid, her part was purely and solely domestic, the care of the home and rearing the family. Since then what a change! Step by step she has advanced toward equality with man and independence of him through the changing laws and customs of society, till today she has every legal right that he has except one and that is sure to come, for equal suffrage has never seemed to me a debatable question but merely a question of time. Nearly every pursuit in life is open to her, every position in society within her reach. This altered status with the growing realization of her independence has given woman an entirely different attitude in the marriage relation. Jealous and watchful of her increasing liberty, insisting on her newly acquired rights, ambitious for further steps toward perfect equality, with abundant opportunity afforded her in

the outside world for independent maintenance, is it not natural that the married woman of modern civilization should resort to divorce more and more frequently in asserting her absolute equality and independence? Two free human wills create more friction in contact than the wills of master and slave, for that is practically but one will. Formerly divorce existed almost entirely for the husband alone. Today nearly 80 per cent. of the divorces obtained in the United States are granted on the libel of the wife. Are we not entitled also to draw some inference from the fact that in the rural districts where the mode of life more resembles that of primitive days and the division of labor is rigidly confined to tilling the soil on the one hand and domestic duties on the other, divorces are only half so numerous as in the cities.

These tendencies are then, in my opinion, one of the deeper causes behind the modern increase of divorce. This cause has been active in both Europe and the United States but much more so in this country since we are the advanced exponents of the idea of individualism and the emancipation of woman. The next most important cause, to my mind, for this increase of divorce is the general breaking away which has taken place in both Europe and the United States from the doctrine of the Canon Law, from the church theory of marriage as a sacrament and an indissoluble bond. Here again, this tendency is much more noticeable in America where Protestantism and liberal views of religion more largely prevail than Europe where Catholicism and the Canon Law have so long held sway. But there are still other reasons why the increase of divorce should be so much

greater in this country. The first of these is our national temperament or, in other words, the independent, nervous and undisciplined character of our people and the pace at which we live, making us impatient of restrictions; and the second is the high ideal of marriage held in this country differing so radically from the European marriage of convenience without love. In France and other countries, these marriages are to a large extent arranged as a business proposition without regard to love or sentiment, but the idea is deep-rooted in the American mind that the marriage where love is not is no marriage and had better be dissolved. The European ideal manifestly requires far less of the parties as regards their conduct toward one another. They can endure there, neglect and indifference which is only natural under the circumstances but which would here be wholly contradictory to our idea of proper marital conduct and would amount to actual insult. Consequently, a marriage from our point of view would often be a hopeless failure here whereas in other countries it would not necessarily be lacking in the practical requirements of the marital relation as there conceived.

Such then are the chief tendencies behind the increase of divorce, to my mind, in Europe and the United States and the greater increase in the latter than in Europe. Certainly it cannot be said that in the last fifty years there has been any great wave of immorality, licentiousness or brutality spreading over Europe or this country. We pride ourselves that we have advanced somewhat in all that goes to make up civilized life. Are these tendencies therefore such as ought to be checked by restricting divorce to any

greater extent than it is restricted today under our present laws?

Why Then Should Divorce be Restricted?

I do not believe personally that there is any need of checking the tendency to break away from the dogma of the church upon this subject. To my mind, dogma and church doctrine have already played too prominent a part in this matter. Milton long ago in his "Doctrine and Discipline of Divorce" declared the theory of the indissolubility of the marriage tie to be a monstrous piece of popery. The dogma of the church upon this subject is in reality mere fetich worship but it has passed for morality. Dogma in Christianity has always been cruel at bottom. Witness all ye holy army of martyrs who have died at the stake for heresy or witchcraft. Personally I do not hesitate to declare that the dogma of the church upon this subject, founded upon the expansion of a mere casual word or two of Christ as reported in the Scriptures, uncertain in their meaning and application, so uncertain that the Catholic and Protestant churches have placed an entirely different interpretation upon them, should have no weight whatsoever as against the actual welfare of society. It is a problem which should be decided upon the teachings of practical experience not upon any apriori theory of dogma. It is a question for the state to regulate not for the church. Marriage is a legal relation, created and controlled by the state, into which the parties have previously contracted to enter. No representative of the church

has any power to create this marriage relation without authority from the State. The state has created and the state can dissolve. As Elizabeth Cady Stanton says, "When two parties contract to marry, the State has the right to ask the question, 'Are the parties of proper age and have they sufficient judgment to make so important a contract?' And the State (she says) should have the corresponding power to dissolve the contract for any breach thereof." The parties, it is true, by their contract promise to live in the marital relation until death shall part them but this contract like all others is deemed to be made with reference to and in contemplation of existing laws, which laws in this instance provide that either party may be relieved from the execution of his part of that promise by failure to perform on the part of the other.

Neither can it be said that the growth of equality and independence has been an undesirable or dangerous tendency. It is possible, however, in individual instances for this tendency to be carried too far. It has its natural limits; woman cannot be man and woman too. She must not lose the essential characteristics of the "eternal feminine" as Robert Grant expresses it. The Creator has established a fundamental division of labor between man and woman and prescribed as woman's primary and absolute share a life work which cannot be largely neglected without danger to the basis of society. Whatever leads woman to regard marriage as merely an incident in her life instead of a fundamental status, an episode to be thoughtlessly and tentatively tripped into and as lightly stepped out of if not found agree-

able to her temperament and ambitions,—whatever leads woman to regard marriage and the right upbuilding of a family as a clog to cherished pursuits and ambitions, as merely a side issue in her life's work, instead of an aim so worthy in itself that to its furtherance other pursuits and ambitions might well be made tributary and secondary, may become an influence inimical to family life and the foundations of our social structure. Within these limits, therefore, the emancipation tendency might well be restricted and if, through impatience of the ennobling discipline of domestic life, women seek relief from petty annoyances or temporary burdens by invoking the aid of lax divorce laws then this is one reason perhaps why freedom of divorce should be restricted.

Again, as to the highness of our American ideas of marriage as a cause of divorce, we must remember that there is a wide distinction between true love—and free love—and when true love has received a shock of disappointment it does not usually readjust itself to a new lover within the next year or two. When this happens we instinctively suspect that it is more a case of free love than of true love and should be checked accordingly. Marriages are not made in heaven and in our striving for that evanescent ideal of lovers' paradise which comes to so few we should not be too quick to say it is all a failure and it should not be made too easy for us to yield to the passing impulse of disappointment.

But the one great fundamental reason why freedom of divorce cannot be allowed, the reason which underlies and is behind all others upon the last analysis, is because of the effect it would have upon the family.

Our whole Western civilization is based upon monogamy. The family is the foundation of the whole structure of our society. Unlimited divorce would mean simply licensed polygamy and polygamy means no civilization. The reasons why monogamy is conducive to a higher order of civilization are, to my mind, these: First, because of the ennobling influence of the love of the one man for the one woman; second, the refining effects resulting from sexual self-restraint and the character discipline derived from the daily bearing and forbearing of the two; thirdly, because of the importance of the home atmosphere and parental influence in the upbringing of children. It is of the highest importance, therefore, to the progress of civilization that the integrity of the family should be preserved. But at what cost? Let us take it first in the case of that marriage where there are no children. If the love of the one man for the one woman has ceased to exist, if in place thereof there has grown up a smouldering fire of hatred between them, and their marriage has proved in truth and in fact no marriage but a daily mockery and profanation of that sacred relation, I know of no reason affecting themselves or society at law, no law in heaven above or in earth below why the state should not declare that to no longer exist in law which has long since ceased to exist in fact and set these unfortunates free to seek such happiness as life may yet have in store for them. Would you compel such people to continue in the marriage relation until possibly children are born to them into such an atmosphere, such a home and such a heritage? Or take it again in the case of a marriage where there

are children. Even here the rights of the individual parent cannot be disregarded. But the true rule, as I apprehend it, is this, that the individual has the right to seek his own personal happiness only so far as this may be done without injury to others, or, in other words, without injury to the children, by the destruction of their home influence and parental teaching, and to the community by the effect of the example upon society at large. When divorce merely relieves the individual from trouble or annoyance or gratifies his passions or desire at the expense of the welfare of the children and of a bad example to others, then the individual must endure for the benefit of others, for the greatest good of the greatest number, such is the doctrine of altruism and the law of the evolution of civilization. But when continuing in the marriage relation will bring great misery upon the individual without any corresponding advantage to the children or the community, then the divorce should be granted. So where the marriage with children has proved a failure and ceased to merit the name of marriage, when the home atmosphere has become one of strife and impurity instead of peace and right thinking, if this condition of things is shown to exist, is it any advantage to the children to be compelled to dwell longer in such a home and such an environment? Are not they far better off with one of the parents? Is it any better example to see this family continue to struggle on together in hatred, violence and immorality, a desecration of the name of family and a festering sore in the eyes of the community? I for my part do not hesitate to answer no. *Whenever in the case of any marriage, the condi-*

tions which make monogamy desirable have ceased to exist, then that marriage should be dissolved. This, in my opinion, upon its last analysis is the true morality and ethics of the problem.

How and to What Extent Should Divorce be Restricted?

The very best way to prevent persons unhappily married from seeking divorce is not to marry them. The great majority of our divorces are due to hasty, ill considered, ill assorted and unfit marriages. Marriages of persons physically and mentally defective, financially incompetent, of insufficient age and slight acquaintance, and marriages of persons afflicted with hereditary disease and mild forms of hereditary insanity are of frequent occurrence; likewise of people with neither money, property, a trade or a job, in short with no visible means of support.

The vital statistics of 1911 in Maine show that in that year 1673 brides and 279 grooms were married between the ages of 15 and 20 years, 11 girls were married under the age of 15, 9 were only 14, one 13, and one was but 12. Seventy-five grooms were 18 years of age and 5 only 16, one groom was only 15. Three brides who were 17 years of age had already been married and divorced, one for the 3rd time at 19, 1 for the 4th time at 29 and for the 5th time at 36. Three hundred and twelve men and 442 women were remarried in 1911 after having been divorced. What can you expect of marriages entered into under such conditions? Yet the moment we talk of further regulation or restriction of marriage in any of these

directions the cry of infringement of personal liberty is at once raised. It is strange but true that the conduct which most deeply concerns the welfare of society and of the race is often the last with which the state is willing to meddle. There seems, however, to be a growing willingness to prohibit unfit marriages. There is a statute very recently adopted in Minnesota prohibiting the marriage of any person afflicted with serious physical or mental disorder and requiring anyone wishing to get married to be examined by a competent medical practitioner and obtain a certificate of soundness. There should be a law in this and every state against the marriage of persons either physically or mentally unfit; against the marriage of girls under the age of sixteen and boys under the age of eighteen, and it does not seem too much to require people who ask the privilege of marrying and bringing children into the world to be an additional burden upon the community, to show that they have some visible means or prospect of support for themselves and children. We can also require a public declaration of intention of marriage for a longer period of time and marry no non-resident couple without proof of such publication of intention at their places of residence, and thus lessen the number of clandestine and runaway marriages. And every state should at least require marriage licenses as in Maine and Massachusetts and all marriage laws should be made uniform throughout the country. Yet in spite of all this, the field of the law is a limited one in this regard. The marrying age of the great majority will ever be the inexperienced, impetuous, hot headed, reckless period of youth and springtime,

when the young man lightly turns to thoughts of love, when the present is all sufficient and the future casts no shadow and when the mate is oftenest chosen at first sight and chiefly for the beauty of her plumage. Moreover, whatever the length of acquaintance, no two people can know each other as well before marriage as they can after they have been tested in the fiery crucible of domestic life. Marriage then at best must always be attended with a large element of chance.

RECONCILIATION.

The second step toward eliminating divorce is to be found in some serious and legally recognized efforts toward reconciliation. A valuable and practical suggestion is to be found in this direction in the system of divorce procedure in operation in Russia today. There the Ecclesiastical authorities have exclusive charge of divorce matters, the civil marriage being unrecognized. There are two tribunals, the one called the Consistory first makes preliminary examination of the allegations of the libel in order to determine whether or not there is a prima facie case. Its next duty is to endeavor to reconcile the two parties and it has power to summon them both before the tribunal for this purpose. If this attempt fails the Consistory then reports this fact and turns over the petition to the second tribunal called the Holy Synod, which has power to hear the case and decree a divorce. A provision might well be inserted in our statutes providing that in every divorce suit the parties shall when possible both be summoned before

the Judge in chambers for a preliminary hearing of reconciliation. If this fails, then and not till then the case may proceed. Some such procedure is sometimes taken informally by our judges as it is, and I remember a case only a short time ago where it proved eminently successful.

And now suppose two people have taken this chance, cast their lot together and have lost, have made the great mistake and find their union has proved an entire failure and that strive as they will they can no longer live together in harmony in the marital relation and wish to dissolve it,—What ought the law to say to them? There is no law, either church or secular which would deny them the right to a legal separation, mensa et thoro, as it is called, from bed and board without the right to remarry. Society has no interest in forcing men and women to continue actually to cohabit when they have come to hate each other. There is no one so fanatical as to insist upon this martyrdom. The controversy comes as to allowing absolute divorce, a vinculo, as it is called, from all the bonds or chains of marriage, with the right to remarry. In the Catholic Church and in South Carolina as we have seen, such absolute divorce is denied upon any ground whatsoever. In the Episcopal Church and in New York and some other states it is allowed only upon the scriptural ground of adultery. Writers, especially churchmen have come forward in large numbers and argue earnestly in favor of this view. Their argument is first and foremost that the right of remarriage should be restricted because this privilege is the chief inducement to divorce. Mr. Phelps, our former minis-

ter to England, in an article in the Forum a few years ago, declared that nine-tenths of the divorces now granted would not be sought if it were not for the privilege of remarriage and that every practicing lawyer would bear witness to this statement from his own experience. It is said that during the two years previous to the passage of the French law of divorce about 3000 separations were granted while in the two years after the new law which allowed the privilege of remarriage some 7000 divorces were decreed. The right of remarriage, it is argued, keeps the possibility of other relations ever present in the mind and encourages the desire for them. Slight quarrels are magnified and incompatibilities treated as hopeless which might otherwise be bridged over and harmonized if the prospect of other experiments were removed. It is true that there may be occasional hardship on an innocent husband or wife, but laws are based on the principle of the greatest good to the greatest number and if the prospect of remarriage is the greatest inducement to divorce, then the removal of this privilege will do more than anything else to lessen frivolous divorce and secure a greater good for the greater number, therefore individual hardship should be endured.

Moreover, they say, is there no responsibility of choice? Can one be allowed to enter hastily, carelessly, experimentally, into a union which is so important in its relation to society and then break that union the moment it proves tedious and try another till one is found to suit the taste? The realization that such a union was the momentous step of her life would lead a woman to enter upon marriage

more seriously and carefully and tend greatly to raise the character of modern marriage. If the objection is raised that we do not prohibit remarriage on the death of either party,—no one considers that an evil, they reply we all deplore the breaking up of home and family which result from death, but death is something beyond our control. Divorce is not, and remarriage is objected to in the case of divorce not because remarriage is undesirable in itself but because it is a chief inducement to unnecessary divorce which is an evil.

Such is their argument and to the extent of denying the guilty party the right to remarry one feels inclined to agree. There is a poetic justice about denying a man who has desecrated the marriage relation and the family tie by adultery or extreme cruelty, the right ever to enter into such a relation again. Yet in this and most other states where absolute divorce is allowed, it has not been the policy of the law makers to prohibit the offending party from remarrying—and there is good reason for this. In the first place it puts a premium upon immorality in the case of such a man and sends him out into the world to become a dangerous factor in society,—a derelict upon the matrimonial sea liable to bring shipwreck upon any weak vessel which may unknowingly encounter it—and there would be many such. Secondly, in hundreds of divorces granted on the libel of one party one is no more at fault than the other. Their marriage is a mistake, a failure, and one allows it to go by default in order to free both. The defendant in such a case should be treated as if innocent.

But when we view it from the point of view of the innocent party, eighty per cent. of whom are women according to statistics, for my part my mind revolts from such a proposition. As Bob Ingersoll says, "Why should we punish an innocent woman for the fault of her husband, what possible good can it be to society to oblige her to remain single for the rest of her life debarred from the joys of home and family—and echo answers why?" It is the relic of dogma and fanatacism combined with false premises and false reasoning. In the first place as a lawyer, from my own observation of divorce cases, I deny that nine-tenths of the divorces granted would not be sought if it were not for the prospect of remarriage. The proportion should be flatly reversed. In not more than one-tenth of the cases, in my opinion, is the purpose or desire of remarriage the moving factor. In the other nine-tenths the immediate motive is *relief*—relief from the "Curse pronounced from the altar" as Kipling termed it. That first at any cause and with it since they can have it, they ask and take the right to obtain such happiness as may be left them in another marriage if occasion should offer it in the future. And why should they not have it? There is no question of monogamy and preservation of the family here, that stage has been passed, the separation is to be decreed in any event. They are to be denied this right forever after simply in order that the other one-tenth might have had in their minds the possibility of remarriage and thus have been induced to seek divorce on unnecessary and frivolous grounds. And here note the assumption involved. It is that under our laws and through our

courts divorces can be obtained by such applicants upon frivolous and insufficient grounds before the marriage has become a hopeless failure, for if it has and there are just causes for the separation, then I say it makes no difference even if the thought or prospect of a definite remarriage was in the mind of the applicant at the time. So then it comes to this that we are asked to condemn the innocent party to life-long celibacy because our laws and our courts are not deemed capable of separating the sheep from the goats. Then I say rather than impose such a burden of sacrifice upon these unfortunates, it is the duty of the State to see to it that our laws and our tribunals are such, if they are not already so, as shall prevent divorces except where the marriage has proved an utter failure and the parties can no longer live together in harmony as man and wife. If they are not so today, it is possible to make them so in this and every other state in the Union. Let us not therefore in the name of a false conception of duty to society have any more unnecessary or useless suffering in this life than already exists. Here is a terrible punishment .proposed to no practical purpose. Think what it might mean, the hundreds of cases that might arise of hardship and martyrdom to innocent women. Think of the temptation to immorality to which they would be subjected. Think of the suffering that might have to be endured if in after years they came to love a worthy man and be loved in return. The consequences here are far reaching. This penalty falls not merely on the innocent divorced wife but also upon the heads of innocent third persons with whom she is bound to

come in contact and into whose lives she is sure to grow. It is too much. We have no right, no authority human or divine to do this thing.

How then shall our laws read in order that none but just divorces shall be granted? To answer now our question asked above, we should not be willing to leave on the statutes grounds of divorce which are so elastic and can be so extended that they amount to the will of either party or mutual consent, such as short periods of desertion, non support, cruel and abusive treatment and the like. The ground of adultery is practically the only specific ground not open to this objection to some extent, and this offense, so directly and fundamentally in violation of the marriage contract should always be a ground for divorce when it is fully proved and the innocent party desires to have the marriage tie dissolved.

But beyond this there is really but one cause for divorce and that is the ground that the marriage has proved a failure and the parties can no longer live together in harmony as man and wife. It is the province of the law to declare this principle and of the Courts to say when it has been conclusively proved. I would therefore make the only ground for divorce in addition to adultery the following, "When the Court or jury is satisfied by the evidence beyond a reasonable doubt that the parties can no longer live together in harmony as man and wife and that it is for their best interests and that of their children, if any, and of society at large, that they should be divorced." But it may be objected, is not this merely the discretion of the Court and would not this lead to greater freedom of divorce than under the exist-

ing specific causes? In my opinion it would not because, in many cases, the mere fact of desertion or non support or cruel and abusive treatment would not show that the marriage had become a hopeless failure—and yet if these specific facts are proved the libellant is entitled by law to a divorce. Such a law is more lax than the strict omnibus law proposed. Again, none of the usual causes for divorce allowed in the various states are sufficient to cover all kinds of conduct which might justify divorce. The evidence might be insufficient to support any single ground but might be enough by combining several grounds. Moreover, in that large class of cases brought for cruel and abusive treatment, which are near the line this is just what the Judges do, if they are satisfied that it is useless for the parties to attempt to live together again they grant the divorce, otherwise not, and this is right and consistent with the true ethics of the problem as we have examined it. Why then should we not openly make it the law and rely upon our tribunals, as in the end we always must, to administer it justly and scrupulously? Nor is this altogether a new proposition in this state. We have seen that such a divorce clause allowing divorce when the judge deems it reasonable and proper, conducive to domestic harmony and consistent with the peace and morality of society, existed in this state from 1867 to 1883. This was simply discretion of the Court and a very lax law as compared to the one above proposed which strictly limits the power to prove beyond reasonable doubt that it is useless for the parties to attempt to continue in the marital relation. Yet this clause appears to have worked well

and was the law of the state for 26 years and since its repeal divorces have increased tremendously instead of decreasing.

Now a word in regard to our tribunals. The Supreme Court of Maine is a very much over worked judiciary. Their time is needed for matters where their legal attainments are called more into requisition than in the ordinary divorce hearing. These hearings, consequently, have to be crowded into the recess periods of each term of court, two or three cases in a half hour in the forenoon or afternoon, where there is no contest—three minutes I think is the record. They cannot give time and the patient hearing to the evidence that is required in order to select the sheep from the goats in every instance. An ordinary cow or horse case involving from $25 to $100 is sometimes allotted a whole day or two days of the time of Court and jury. But these matters involving the life happiness of a whole family are ground through the mill in from three minutes to half an hour. I believe, therefore, that this jurisdiction should be conferred upon our probate courts in each county with the right of jury trial when requested by either party and of appeal as usual to the Supreme Court on questions of law. The probate court is the court of family affairs and the most appropriate tribunal for the remedying of family troubles. This is the practice in England where the probate and divorce courts are united. Our probate judges are all men of that high character which is required. They hold court every two weeks and the divorce hearings instead of being crowded into from one to three terms of the Supreme Court may be

heard two or three at a session during the year, giving ample time for each case, allowing the Court to examine the witnesses in detail.

But there is one other important step which must be taken in remedial divorce legislation before any changes in the laws of this or any other state in the Union will be of any avail and that is to make not only the marriage laws but the grounds of divorce and the residence laws uniform throughout the United States. Let me illustrate the situation as it exists today by three cases given by a member of Congress in Harper's Weekly two years ago. In the first case, a wife left the state of New York for the purpose and got a divorce from her husband. Her husband in New York, believing himself to be divorced and getting tired of single life, got married again and was promptly convicted of bigamy since the divorce obtained by his wife outside New York was not valid in New York. The second case was that of a New Jersey editor who went west and got divorced and then came back to New Jersey and married again and at last accounts he was editing his paper behind the bars for bigamy, since the western divorce was invalid and his marriage in New Jersey was not dissolved, consequently his second marriage there was unlawful. In the third case a man deserted his wife and family in New York and got a divorce in Pennsylvania after short residence and constructive notice, then married again in Pennsylvania lived there for a time and again left his wife and went to California and obtained a divorce in the same way and was there married a third time. Now if his lawful wife in California had gone to Pennsyl-

vania with him, she would have ceased to be his wife there, and so if the Pennsylvania wife had gone to New York, and worst of all if the man had kept each of his wives out of the other states he might have continued to live in the marriage relation with all three of them and broken no laws whatsoever of any state in this country. This state of things is, of course, monstrous and the only way it can be changed is by constitutional amendment giving Congress the power to enact the uniform Federal law, which is not likely to be accomplished, or else for all the states to pass uniform laws both as to causes of divorce and length of residence required, and especially for each state to enact that any divorce thereafter obtained in any other state shall be valid in the state in question. Complete uniformity of laws by action of each state is perhaps too much to hope for. But the Report of the American Bar Association for 1912 urges that there be no relaxation in the effort to secure absolute uniformity in all laws affecting jurisdiction in divorce matters. The National Association for securing uniformity of laws throughout the states, in 1901 drafted and recommended two bills for obtaining a uniform law in all the states which should prevent migrating from one state where a divorce could not be obtained to another where it could after a short residence in the latter. The first of these acts provides that "No divorce shall be granted for any cause arising prior to the residence of the complainant or defendant in this state which was not ground for divorce in that state where the cause arose." The second provides that "No person shall be entitled to a divorce for any cause arising in this

state, who has not had actual residence in this state for at least one year next before bringing suit for divorce, with a bona fide intention of making this state his or her permanent home, nor for any cause arising out of the state except after two years' residence within the state with like intent." These bills have been favorably reported to our legislature by our commissioners for the State of Maine but no action has as yet been taken.

To sum up therefore the conclusions derived from our investigations, we find that divorce is an institution which has existed to a greater or less degree in all ages; that freedom of divorce sometimes accompanies periods of licentiousness and immorality, and sometimes not, that when it does it is more the outcome than the cause of the licentious tendencies of the period,—that increase of divorce is not necessarily a symptom of degeneracy but may be the result of the changing condition in the evolution of society and the progress of civilization; that divorce has largely increased in Europe during the last half century but much more rapidly in this country; that the chief causes of this were (1) the evolution of the individual and of woman to a position of equality and independence, and (2) the breaking away from the dogma of the church as to the indissolubility of marriage. We have further seen that freedom of divorce should be restricted, within certain limits, since otherwise it would mean polygamy, the disintegration of the family and an inferior civilization; that the proper limits which the law should fix to the right of divorce are that when the conditions which make monogamy desirable in general have ceased to

exist in a particular marriage, or in other words, when a marriage has proved an irremediable failure the divorce should be granted with the right to remarry, otherwise not; that upon some of the grounds of divorce allowed in this and in other states it may be obtained for insufficient causes, practically by mutual consent or in some cases the will of either party; and finally that to improve our existing laws and prevent unnecessary divorce, the following changes are desirable, namely:

1. The passage of careful and uniform marriage laws throughout all the states, requiring licenses and declaration of intentions, and prohibiting marriages before a certain age and when either party is physically defective.

2. That provision be made for a preliminary hearing in every case for the purpose of effecting a reconciliation.

3. That absolute divorce with the right to remarry be allowed for the cause of adultery and whenever the court or jury shall be satisfied beyond reasonable doubt that the parties can no longer live together in harmony, and it is for their best interests and those of society that they should be divorced, and that jurisdiction on divorce matters be given to the Probate Court.

4. That these causes of divorce together with a two year bona fide residence clause be made uniform throughout all the states, and either by a federal law made possible by a statutory amendment or by like laws in each state, each state providing in the latter case that a divorce granted in any other state shall be valid in the state in question.

But after all it must be remembered that laws cannot change human nature, reform bad husbands or make good wives, legislate morality into criminals or tenderness into brutes, and it is chiefly through the influence of education, moral discipline, religious training and the higher civilization that we must look for such an evolution in the character of humanity as will eventually make marriage come in time to be in fact what it is in theory:—"For better or worse, for richer or poorer, in sickness and in health, till death us do part."

(Applause.)

THE PRESIDENT: What is to be said upon the recommendations of Bro. Whitehouse in this paper.

MR. HERSEY: I move that it be referred to the Committee on Legal Reform.

THE PRESIDENT: And is it the pleasure of the Association that it be so referred? So agreed.

THE PRESIDENT: The last address is by Hon. L. B. Deasy, in memory of former Presidents, Hon Franklin A. Wilson and Hon. Herbert A. Heath. Mr. Deasy delivered a strong memorial address which was listened to with great interest, being as follows:

MEMORIAL ADDRESS

by HON. L. B. DEASY.

Since the last meeting of this association two of its former presidents have died. On the second day of July of last year in the City of Bangor where he had lived so long, which he loved so well and for which he had done so much, Franklin A. Wilson went out from among the living to join "the other living called the dead."

On the 18th day of August of this year in this City, at the meridian of his splendid powers, Herbert M. Heath was struck down by that dread Archer, who so loves a shining mark.

The program does not quite accurately state my function. I do not purpose to make an extended address. It is not necessary to do so here. I can say nothing that you do not already know. The image of our deceased brothers, that you will cherish in your minds and hearts, is not any picture that I might crudely paint. No words of mine can add aught to the reputation which they, by their lives, their words and their work builded in the sight of all men. I purpose to speak briefly, merely to give voice to the admiration and love of all the Bar for Franklin A. Wilson and Herbert M. Heath.

Franklin A. Wilson was born in the town of Bradford, Maine, on the 6th day of November, 1832. He was graduated at Bowdoin College in the class of 1854. He pursued the study of law with Honorable John A. Peters and was admitted to the Bar at Bangor October 8th, 1856. Between the years 1866 and 1873 he was a partner of the late Chief Justice Peters. In 1875 he formed a partnership with the late Hon. Charles F. Woodard. This partnership continued until Mr. Woodard was appointed to the Supreme Bench. From this time almost to his death he continued in more or less active practice, though seldom engaged in court work.

Wondrous changes have taken place within the last century. In olden times the greatest statesman was he who waged successful war. In these times of ours the greatest statesman is he who preserves uninterrupted peace. So in our profession. Formerly the lawyers chief function was fighting legal battles. Now his chief function is preventing legal battles. The old lawyer exploited litigants. The modern lawyer pacifies litigants. In Statesmanship, Diplomacy and in Law the greatest prizes in honors, in repute and in emoluments do not go to the truculent, intellectual gladiator.

Bro. Wilson belonged distinctly to the modern school. For many years while engaged in active practice he seldom appeared in court. He did not encourage or enjoy legal warfare. By making concessions he compelled concessions. By his own reasonableness he shamed his opponent into reasonableness. He addressed his arguments to his adver-

sary rather than to Judge and Jury, and accomplished quicker and frequently better results.

The lawyer's most valuable asset is confidence. Whatever the cynic may say, the paragrapher suggest or the public pretend to believe, whenever any man or woman, cynic, paragrapher, or public must needs confide in some one who will keep and guard his confidence with his life he confides in a lawyer. And rarely is this trust betrayed.

In Franklin Wilson's long practice how many men and women have gone to him with their dearest possessions, their secret troubles, their wrongs, their sorrow, their shame, and have been comforted by his sane counsel, protected by his tact and skill and saved by his unswerving fidelity.

This goes without saying. In this perfect fidelity Franklin Wilson was not an exception. He was a type. But he was a type of what is highest and best in our profession.

What Carl Schurz said of Charles Sumner can with equal truth, I think, be said of Franklin A. Wilson:

> "His character was so high, his integrity so intact that the most daring eagerness of calumny, the most wanton audacity of insinuation standing on tip toe could not reach him."

But most of us prefer to think of Franklin A. Wilson not as a lawyer but as a friend, as a companion, as a man. He was genial, optimistic, magnetic. His breadth of vision, his wealth of reminiscence, his contagious humor, made him a most delightful companion.

He combined virile strength and masculine firmness with a consideration for others, a sympathy, a delicacy almost feminine. He stood the test in "The Crucible" pronounced supreme:

> "Test of a man, if his worth be
> In accord with the ultimate plan:
> That he be not to his marring
> Always and utterly man;
> That he bring out of the tumult,
> Fitter and undefiled,
> To woman the heart of a woman,
> To children the heart of a child."

Herbert M. Heath was born on August 27, 1853. He was graduated at Bowdoin College in the class of 1872. He pursued the study of law with Hon. J. C. Talbot of East Machias and Prof. Charles Danforth at Gardiner. He was admitted to the bar in 1876 and spent his whole professional life at Augusta.

Bro. Heath was a different type of man from Bro. Wilson. Much younger he yet more nearly resembled the lawyer of olden time. A wise and sane counsellor, a profound student, yet he was at his best in the forum. While he never encouraged litigation he enjoyed, or seemed to enjoy, legal contests.

And how splendidly he was equipped for such warfare. With what thoroughness he prepared for every emergency. With what unerring instinct did he detect and expose falsehood and sophistry. With what masterly logic he marshaled his arguments. With what fitting words he clothed his pregnant thought.

He enjoyed for many years a very large professional practice. The demands upon his time were constant and engrossing. Yet his large resources and his

great talents were ever at the command of any suitor, however humble, who had a worthy cause, however small.

He was a great worker. He allowed himself little rest. He took few holidays. As completely as any man I have known he,

> "Filled each unforgiving minute with sixty seconds worth of distance run."

His example in this respect is not to be without reserve commended. If his heart had not been forced to bear the strain of a too strenuous life it might have borne the strain of an exhausting illness.

Bro. Heath was reserved. He was often preoccupied. To many he seemed cold and distant. He did not "Dull his palm with entertainment of each new-hatched unfledged comrade." But those who knew him best knew that beneath his reserved exterior there beat a warm and sympathetic heart and that his loyalty to his friends was as firm as the granite hills.

Our deceased Brothers, though widely different in temperament and in intellectual bent, were each representative of what is highest and best in our profession.

We are prouder of our Bar because they were members of it. The profession of law has acquired increased dignity because of their steadfast adherence to its loftiest ideals.

I do not think that I am guilty of using language too extravagant when I quote the words of Walter

Menu

OYSTERS ON HALF SHELL

OXTAIL SOUP

OLIVES BREADSTICKS CELERY

FRIED SMELTS, TARTAR SAUCE

ROAST NATIVE CHICKEN

BAKED SWEET POTATOES SQUASH BOILED ONIONS

ROMAN PUNCH CIGARETTES

LOBSTER SALAD, MAYONNAISE DRESSING

HOT ROLLS

VANILLA ICE CREAM WITH MAPLE SYRUP ASSORTED CAKE

TOASTED CRACKERS

ROQUEFORT AND AMERICAN CHEESE

COFFEE CIGARS

Post Prandial

HON. OSCAR F. FELLOWS, Presiding

By-Laws of the

Maine State Bar Association

ARTICLE 1. MEMBERSHIP

Members of the Bar in this State shall be eligible to membership and shall be elected at any legal meeting, upon the nomination of the committee on membership.

ARTICLE 2. OFFICERS

The officers of this Association shall be a president, three vice-presidents, an executive committee, a committee on law reform, a committee on legal education and admission to the bar, a committee on legal history, a secretary and a treasurer. All these officers shall be elected by ballot at the annual meeting and shall hold office until others are elected and qualified in their stead.

Other standing committees than those above specified may be provided by the Association from time to time as may be found expedient.

ARTICLE 3. PRESIDENT

The president, or in his absence one of the vice-presidents, shall preside at all meetings of the Association. The president shall be, *ex-officio*, a member of the executive committee.

ARTICLE 4. EXECUTIVE COMMITTEE

The executive committee shall consist of four members beside the president. They shall have charge of the affairs of the Association, make arrangements for meetings, order the disbursement of the funds of the Association, audit its accounts, and have such other powers as may be conferred on them by vote at any meeting of the Association.

ARTICLE 5. COMMITTEE ON LAW REFORM

The committee on law reform shall consist of five members. It shall be the duty of this committee to consider and report to the Association such amendments of the law as should in their opinion be adopted; also to scrutinize proposed changes of the law, and when necessary report upon the same; also to observe the practical working of the judicial system of the State and recommend by written or printed reports, from time to time, any changes therein which experience or observation may suggest.

ARTICLE 6. COMMITTEE ON LEGAL EDUCATION

The committee on legal education shall consist of one member from each county represented in the Association. Its duty shall be to prepare and report a system of legal education and for examination and admission to the practice of the profession in this State, and report from time to time such changes in the system of examination and admission as may be deemed advisable.

ARTICLE 7. COMMITTEE ON MEMBERSHIP

The committee on membership shall consist of one member from each county represented in the Association. All applications for membership shall be made to the member from the county where the applicant resides, if any, otherwise to any member of the committee. Applicants shall be nominated for membership by the concurrence of three members of this committee.

ARTICLE 8. COMMITTEE ON LEGAL HISTORY

The committee on legal history shall consist of so many members as the Association shall, from year to year, appoint.

Its duty shall be to provide for the preservation in the archives of the society, of the record of such facts relating to the history of the profession as may be of interest, and of suitable written or printed memorials of the lives and characters of distinguished members of the profession.

ARTICLE 9. SECRETARY

The secretary shall keep the records of the Association, have charge of its archives, and discharge such other duties as the Association may require.

ARTICLE 10. TREASURER

The treasurer shall collect and receive the dues of the Association, keep and by order of the executive committee disburse its funds, and discharge such other duties as may pertain to his office. Any person may fill the office of both secretary and treasurer if elected thereto. A vacancy occuring in either of these offices may be filled by appointment of the executive committee.

ARTICLE 11. MEETINGS

The annual meeting of the Association shall be held on the second Wednesday of January, at such place in the city of Augusta in the years in which the Legislature shall be in session, and in the alternate years at such place and time as the executive committee may determine. Special meetings may be called by the president, on application in writing of five members, ten days' notice of which by mail shall be given to each member by the secretary, stating the object of the meeting. Fifteen members shall constitute a quorum at any meeting.

ARTICLE 12. ANNUAL DUES

Amended, Feb. 14, 1894, Jan. 11, 1911.

Failure to pay any annual due within two years shall suspend the membership of the person in default. If such person shall pay at any time to the Treasurer all arrears due from him at the time of such suspension and also all intervening dues to the time of payment, he shall be re-instated in membership.

ARTICLE 13. EXPULSION OF MEMBERS

Any member may be expelled for misconduct, professional or otherwise, by a two-thirds vote of the members present at any meeting after proper notice of the charges; and all the interest of any member in the property of the Association upon the termination of his membership, by expulsion, resignation or otherwise, shall thereupon vest absolutely in the Association.

ARTICLE 14. AMENDMENTS

These by-laws may be amended only by a two-thirds vote of the members present at an annual meeting of the Association.

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The secretary shall keep the records of the Association, have charge of its archives, and discharge such other duties as the Association may require.

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Article 14. Amendments

These by-laws may be amended only by a two-thirds vote of the members present at an annual meeting of the Association.

OFFICERS SINCE ORGANIZATION

Presidents

Charles F. Libby, Portland, 1891 to 1896.

*Herbert M. Heath, Augusta, 1896 to 1897.

*Franklin A. Wilson, Bangor, 1897 to 1898.

Charles E. Littlefield, Rockland, 1898 to 1899.

Wallace H. White, Lewiston, 1899 to 1902.

Joseph W. Symonds, Portland, 1902 to 1903.

Joseph C. Holman, Farmington, 1903 to 1904.

George D. Bisbee, Rumford Falls, 1904 to 1905.

*Orville D. Baker, Augusta, 1905 to Aug. 16, 1908.

Luere B. Deasy, Bar Harbor, 1909 to 1911.

O. F. Fellows, Bangor, 1911 to 1913.

George C. Wing, Auburn, 1913 to

Secretary and Treasurer

Leslie C. Cornish, Augusta, 1891 to 1907.

Norman L. Bassett, Augusta, 1907 to

*Deceased

Members of the

Maine State Bar Association

1912 and 1913

Androscoggin County.

Tascus Atwood, - - -	Auburn.
Fortunat Belleau, - - -	Lewiston.
Seth M. Carter, - - -	Auburn.
J. G. Chabot, - - -	Lewiston.
Franklin M. Drew, - -	Lewiston.
W. H. Judkins, - - -	Lewiston.
Rogers P. Kelley, - -	Auburn.
A. T. L'Heureux, - -	Lewiston.
F. E. Ludden, - - -	Auburn.
Harry Manser, - - -	Auburn.
J. H. Maxwell, - - -	Livermore Falls
Seth May, - - - -	Auburn.
George S. McCarty, - -	Lewiston.
D. J. McGillicuddy, - -	Lewiston.
Frank A. Morey, - - -	Lewiston.
John A. Morrill, - - -	Auburn.
Wm. H. Newell, - - -	Lewiston.
Henry W. Oakes, - - -	Auburn.
John L. Reade, - - -	Lewiston.
W. B. Skelton, - - -	Lewiston.
A. E. Verrill, - - -	Auburn.
George C. Webber, - -	Auburn.

Harrie L. Webber, - - Auburn.
Wallace H. White, - - Lewiston.
Wallace H. White, Jr., - - Lewiston.
George C. Wing, - - - Auburn.
George C. Wing, Jr., - - Auburn.

Aroostook County.

Bernard Archibald, - - - Houlton.
James Archibald, - - - Houlton.
Walter Cary, - - - - Houlton.
Roland E. Clark, - - - Houlton.
Charles F. Daggett, - - Presque Isle.
O. L. Farnsworth, - - - Caribou.
Willis B. Hall, - - - Caribou.
W. P. Hamilton, - - - Caribou.
Ira G. Hersey, - - - Houlton.
E. A. Holmes, - - - Caribou.
J. A. Laliberte, - - - Fort Kent.
Wallace R. Lumbert, - - Caribou.
John B. Madigan, - - - Houlton.
James D. Maxwell, - - Island Falls.
Leonard A. Pierce, - - Houlton.
Aaron A. Putnam, - - Houlton.
Beecher Putnam, - - - Houlton.
H. W. Safford, - - - Mars Hill.
R. W. Shaw, - - - Houlton.
S. S. Thornton, - - - Houlton

Cumberland County.

George H. Allan, - - - Portland.
Waldo H. Bennett, - - Portland.
Jacob H. Berman, - - Portland.

William S. Bradley, - - - Portland.
Wilford G. Chapman, - - Portland.
Frederick V. Chase, - - Portland.
Nathan Clifford, - - - Portland.
Philip G. Clifford, - - Portland
Joseph E. F. Connolly, - - Portland.
Charles S. Cook, - - - Portland.
Linwood F. Crockett, - - Portland.
John F. Dana, - - - Portland.
Josiah H. Drummond, Jr., - Portland.
Isaac W. Dyer, - - - Portland.
Frank Fellows, - - - Portland.
James C. Fox, - - - Portland.
M. P. Frank, - - - Portland.
Eben W. Freeman, - - - Portland.
E. O. Greenleaf, - - - Portland.
Clarence Hale, - - - Portland.
Frederick Hale, - - - Portland.
C. A. Hight, - - - - Portland.
G. Allen Howe, - - - Brunswick.
Wm. M. Ingraham, - - Portland.
Howard R. Ives, - - - Portland.
Hiram Knowlton, - - - Portland.
W. J. Knowlton, - - - Portland.
Frederic J. Laughlin, - - Portland.
C. Thornton Libby, - - Portland.
Charles F. Libby, - - - Portland.
Wm. H. Looney, - - - Portland.
John J. Lynch, - - - Portland.
Frank H. Marshall, - - - Portland.
Carroll W. Morrill, - - - Portland.
Augustus F. Moulton, - - Portland.
David E. Moulton, - - - Portland.
Harry E. Nixon, - - - Portland.

George F. Noyes,	- - -	Portland.
Raymond S. Oakes,	- - -	Portland.
Franklin C. Payson,	- -	Portland.
J. Bennett Pike,	- - -	Bridgton.
Barrett Potter,	- - -	Brunswick.
Frank H. Purinton,	- - -	Portland
Wm. L. Putnam,	- - -	Portland.
Edward M. Rand,	- - -	Portland.
Robert E. Randall,	- - -	Freeport.
Edward C. Reynolds,	- -	Portland.
F. W. Robinson,	- - -	Portland.
Maurice E. Rosen,	- - -	Portland.
J. H. Rousseau,	- - -	Brunswick.
Clarence E. Sawyer,	- -	Brunswick.
George M. Seiders,	- -	Portland.
Carroll B. Skillin,	- - -	Portland.
David W. Snow,	- - -	Portland.
H. W. Swasey,	- - -	Portland.
H. P. Sweetser,	- - -	Portland.
Joseph W. Symonds,	- -	Portland.
Henry N. Taylor,	- - -	Portland.
Benj. Thompson,	- - -	Portland.
Edward F. Tompson,	- -	Portland.
H. M. Verrill,	- - -	Portland.
Harry R. Virgin,	- - -	Portland.
Augustus H. Walker,	- -	Bridgton.
John A. Waterman,	- -	Gorham.
Lindley M. Webb,	- - -	Portland.
Richard Webb,	- - -	Portland.
Edward W. Wheeler,	- -	Brunswick.
John S. White,	- - -	Naples.
Robert T. Whitehouse,	- -	Portland.
Virgil C. Wilson,	- - -	Portland.
Albert S. Woodman,	- -	Portland.
Edward Woodman,	- -	Portland.

Franklin County.

Cyrus N. Blanchard,	- -	Wilton.
Frank W. Butler,	- - -	Farmington.
A. F. Fenderson,	- - -	Farmington.
Currier C. Holman,	- -	Farmington.
Joseph C. Holman,	- -	Farmington.
Sumner P. Mills,	- - -	Farmington.
J. Blaine Morrison,	- -	Phillips.
Elmer E. Richards,	- -	Farmington.
F. E. Timberlake,	- - -	Phillips.
Josiah H. Thompson,	- -	Farmington.

Hancock County.

Wiley C. Conary,	- - -	Bucksport.
L. B. Deasy,	- - - -	Bar Harbor.
Hannibal E. Hamlin,	- -	Ellsworth.
Seth W. Norwood,	- - -	S. W. Harbor.
John A. Peters,	- - -	Ellsworth.
E. P. Spofford,	- - -	Deer Isle.
B. E. Tracy,	- - - -	Winter Harbor.
Chas. H. Wood,	- - -	Bar Harbor.

Kennebec County.

Charles L. Andrews,	- -	Augusta.
Charles W. Atchley,	- -	Waterville.
George K. Bassett,	- - -	Augusta.
Norman L. Bassett,	- -	Augusta.
Emery O. Beane,	- - -	Hallowell.
Geo. K. Boutelle,	- - -	Waterville.
A. Harrison Bridges,	- -	Waterville.

F. E. Brown, - - - -	Waterville.
Lewis A. Burleigh, - - -	Augusta.
Leroy T. Carleton, - - -	Winthrop.
F. W. Clair, - - - -	Waterville.
Frank L. Dutton, - - -	Augusta.
Harvey D. Eaton, - - -	Waterville.
Frank G. Farrington, - -	Augusta.
Geo. W. Field, - - -	Oakland.
W. H. Fisher, - - -	Augusta.
Sanford L. Fogg, - - -	Augusta.
Dana P. Foster,* - - -	Waterville.
H. E. Foster, - - -	Winthrop.
A. M. Goddard, - - -	Augusta.
Wm. T. Haines, - - -	Waterville.
Herbert M. Heath,* - -	Augusta.
Geo. W. Heselton, - - -	Gardiner.
Guy A. Hildreth,* - - -	Gardiner.
Melvin S. Holway, - -	Augusta.
C. F. Johnson, - - -	Waterville.
Treby Johnson, - - -	Augusta.
Charles W. Jones, - - .	Augusta.
Thomas Leigh, - - -	Augusta.
Fremont J. C. Little, - -	Augusta.
Thomas J. Lynch, - - -	Augusta.
Benedict F. Maher, - -	Augusta.
Ernest L. McLean, - - -	Augusta.
Harold H. Murchie, - -	Augusta.
Carroll N. Perkins, - - -	Waterville.
Arthur L. Perry, - - -	Gardiner.
F. K. Shaw, - - - -	Waterville.
G. T. Stevens, - - -	Augusta.
Asbury C. Stilphen, - -	Gardiner.

* Deceased.

Samuel Titcomb, - - -	Augusta.
Henry S. Webster, - - -	Gardiner.
Joseph Williamson, - -	Augusta.

Knox County.

Alan L. Bird, - - - -	Rockland.
Edward B. Burpee, - - -	Rockland.
William T. Cobb, - - -	Rockland.
Oscar H. Emery, - - -	Camden.
Edw. K. Gould, - - -	Rockland.
Frank H. Ingraham, - -	Rockland.
Arthur S. Littlefield, - -	Rockland.
J. H. Montgomery, - - -	Camden.
Jos. E. Moore, - - -	Thomaston.
Reuel Robinson, - - -	Camden.
L. M. Staples, - - -	Washington.
R. I. Thompson, - - -	Rockland.
Oscar H. Tripp, - - -	Rockland.
C. M. Walker, - - -	Rockland.
Frederick S. Walls, - -	Vinal Haven.
Milton W. Weymouth, - -	Rockland.

Lincoln County.

George A. Cowan, - - -	Damariscotta.
Emerson Hilton, - - -	Wiscasset.
James B. Perkins, - - -	Boothbay Har.
Cyrus R. Tupper, - - -	Boothbay Har.

Oxford County.

Albert Beliveau, - - -	Rumford Falls.
George D. Bisbee, - - -	Rumford Falls.
L. W. Blanchard, - - -	Rumford Falls.
Fred R. Dyer, - - -	Buckfield.

P. C. Fickett, - - - - West Paris.
Alfred S. Kimball, - - - Norway.
Ralph T. Parker, - - - Rumford Falls.
Albert J. Stearns, - - - Norway.
John P. Swasey, - - - Canton.
Alton C. Wheeler, - - - South Paris.
J. S. Wright, - - - South Paris.

Penobscot County.

Frederick H. Appleton, - Bangor.
Taber D. Bailey, - - - Bangor.
Benjamin W. Blanchard, - - Bangor.
Irving O. Bragg, - - - Newport.
Winfield S. Brown, - - - Dexter.
James H. Burgess, - - Bangor.
Hugh R. Chaplin, - - - Bangor.
Milton S Clifford, - - - Bangor.
Hugo Clark. - - - Bangor.
Charles P. Conners, - - Bangor.
J. Willis Crosby, - - - Dexter.
Charles J. Dunn, - - - Orono.
O. F. Fellows, - - - Bangor.
Raymond Fellows, - - - Bangor.
Bertram L. Fletcher, - - Bangor.
P. B. Gardner, - - - Bangor.
P. H. Gillin, - - - - Bangor.
Joseph F. Gould. - - - Old Town.
F. W. Halliday, - - - Newport.
P. A. Hasty, - - - - Dexter.
Lawrence V. Jones, - - Bangor.
Mathew Laughlin, - - - Bangor.
Forrest J. Martin,* - - - Bangor.

* Deceased.

John R. Mason, - - -	Bangor.
John B. Merrill, - - -	Bangor.
Henry L. Mitchell, - - -	Bangor.
Wm. H. Mitchell, - - -	Newport.
Ulysses G. Mudgett, - -	Bangor.
F. H. Parkhurst, - - -	Bangor.
W. H. Powell, - - -	Old Town.
Charles H. Reid, Jr., - -	Bangor.
William H. Robinson, - -	Bangor.
Allen E. Rogers, - - -	Orono.
Erastus C. Ryder, - - -	Bangor.
Bertram L. Smith, - - -	Patten.
Donald F. Snow, - - -	Bangor.
Louis C. Stearns, Jr., - -	Bangor.
George W. Thombs, - -	Lincoln.
Geo. E Thompson, - - -	Bangor.
Franklin A. Wilson, - -	Bangor.
John Wilson, - - -	Bangor

Piscataquis County.

Frank W. Ball, - - -	Dover.
Leon G. C. Brown, - - -	Milo.
William A. Burgess, - -	Dover.
M. L. Durgin, - - -	Milo.
Ross St. Germain, - - -	Greenville.
Frank E. Guernsey, - -	Dover.
Charles W. Hayes, - - -	Foxcroft.
George W. Howe, - - -	Milo.
Henry Hudson, - -	Guilford.
James H. Hudson, - - -	Guilford.
Frank C. Merritt, - - -	Dover.
William H. Monroe, - -	Brownville.
Willis E Parsons, - - -	Foxcroft.

Alfred R. Peaks, - - -	Foxcroft.
Francis C. Peaks, - - -	Dover.
Joseph B. Peaks, - - -	Dover.
Harry L. Smith, - - -	Greenville.
John F. Sprague, - - -	Monson.

Sagadahoc County.

Arthur J. Dunton, - - -	Bath.
Wm. T. Hall, - - -	Richmond.
Wm. T. Hall. Jr., - - -	Bath.
George E. Hughes, - -	Bath.
John J. Keegan, - - -	Bath.
A. P. Norton, - - -	Bath.
Harold M. Sewall, - - -	Bath.
Frank L. Staples, - -	Bath.
Joseph M. Trott, - - -	Bath.

Somerset County.

T. A. Anderson, - - -	Pittsfield.
Bernard Gibbs, - - -	Madison.
Forrest Goodwin,* - -	Skowhegan.
Harold I. Goss, - - -	Bingham.
George W. Gower, - -	Skowhegan.
Fred F. Lawrence, - -	Skowhegan.
Daniel Lewis, - - -	Skowhegan.
John W. Manson, - -	Pittsfield.
Edward F. Merrill, - -	Skowhegan.
E. N. Merrill, - - -	Skowhegan.
Augustine Simmons, - -	No. Anson.
C. O. Small, - - -	Madison.
L. L. Walton, - -	Skowhegan.

* Deceased.

Waldo County.

Ellery Bowden, - - -	Winterport.
John R. Dunton, - - -	Belfast.
R. F. Dunton, - - -	Belfast.
George E. Johnson, - -	Belfast.
Eben F. Littlefield - -	Belfast
Ralph I. Morse - - -	Belfast.
Arthur Ritchie, - - -	Liberty.
Wm. P. Thompson, - -	Belfast.

Washington County.

James M. Beckett, - -	Calaïs.
Frederick Bogue, - -	East Machias.
George A. Curran, - -	Calais.
Clement B. Donworth, - -	Machias.
Herbert J. Dudley, - - -	Calais.
Oscar H. Dunbar, - - -	Jonesport.
George R. Gardner, - -	Calais.
H. H. Gray, - - - -	Millbridge.
J. H. McFaul, - - -	Eastport.
I. G. McLarren, - - -	Eastport.
L. H. Newcomb, - - -	Eastport.
Elisha W. Pike, - - -	Eastport

York County.

Fred J. Allen, - - -	Sanford.
Eva E. Bean, - - -	Old Orchard
James O. Bradbury, - -	Saco.
Elmer J. Burnham - - -	Kittery.
Arthur J. B. Cartier - -	Biddeford.

Benjamin F. Cleaves, - -	Biddeford.
Aaron B. Cole, - -	Eliot.
George A Emery, - - -	Saco.
Willis T. Emmons, - -	Saco.
Walter J. Gilpatrick, - -	Biddeford.
Edward F. Gowell, - - -	Berwick.
Frank M. Higgins, - -	Limerick.
Louis B. Lansier, - - -	Biddeford.
Percy N. H. Lombard, - -	Old Orchard.
Joseph R. Paquin, - - -	Biddeford.
Charles H. Prescott. - -	Biddeford.
John C. Stewart, - - -	York Village.
Edwin Stone, - - -	Biddeford.
Lucius B. Swett, - - -	Kittery.
Homer T. Waterhouse, - -	Kennebunk.
Hiram Willard, - - -	Sanford.

COUNTY BAR ASSOCIATIONS AND THEIR OFFICERS

Androscoggin County Bar Association
George C. Wing, Pres. Henry W. Oakes, Sec.

Aroostook Bar Association
Peter C. Keegan, Pres. Ransford W. Shaw, Sec.

Cumberland Bar Association
Franklin C. Payson, Pres. John F. A. Merrill, Sec.

Franklin County Bar Association
Byron M. Small, Sec.

Hancock County Bar Association
L. B. Deasy, Pres. William E. Whiting, Sec.

Kennebec Bar Association
Geo. W. Heselton, Pres. Charles L. Andrews, Sec.

Knox County Bar and Library Association
D. N. Mortland, Pres. C. M. Walker, Sec.

Lincoln County Bar Association
R. S. Partridge, Pres. C. L. Macurda, Sec.

Oxford Bar Association
A. E. Herrick, Pres. C. F. Whitman, Sec.

Penobscot Bar Association
F. H. Appleton, Pres. John Wilson, Sec.

The Trustees of the Law Library in the County of Piscataquis
John F. Sprague, Pres. Willis E. Parsons, Sec.

Sagadahoc Bar Association
William T. Hall, Pres. Walter S. Glidden, Sec.

Somerset Bar and Law Library Association
David D. Stewart, Pres. Wm. T. Seekins, Sec.

Waldo County Bar Association
Geo E. Johnson, Pres. Carleton Doak, Sec.

Washington County Bar Associaton
John F. Lynch, Pres. Clement B. Donworth, Sec.

York Bar Association
William S. Mathews, Pres. Thomas B. Walker, Sec.

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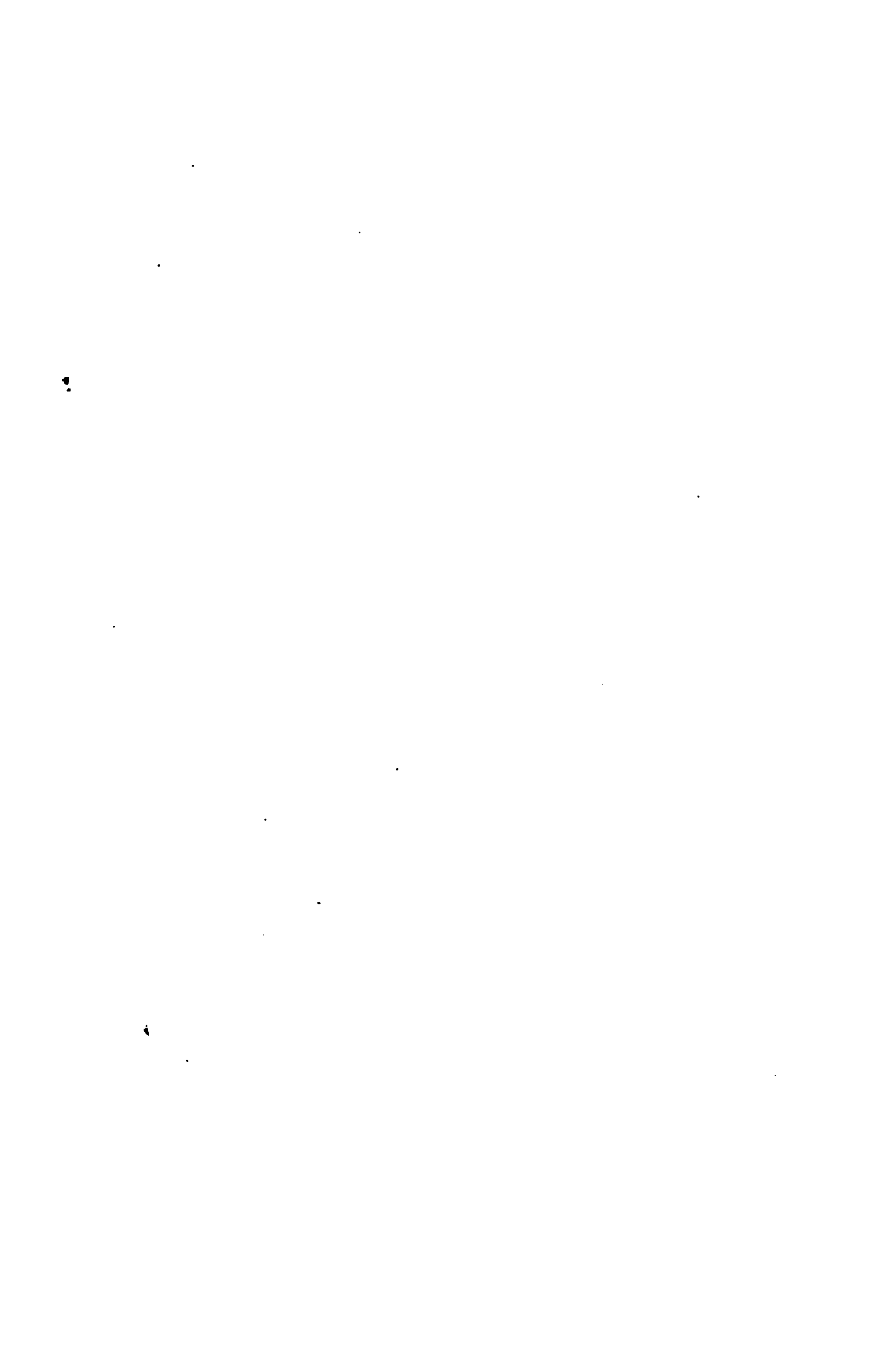

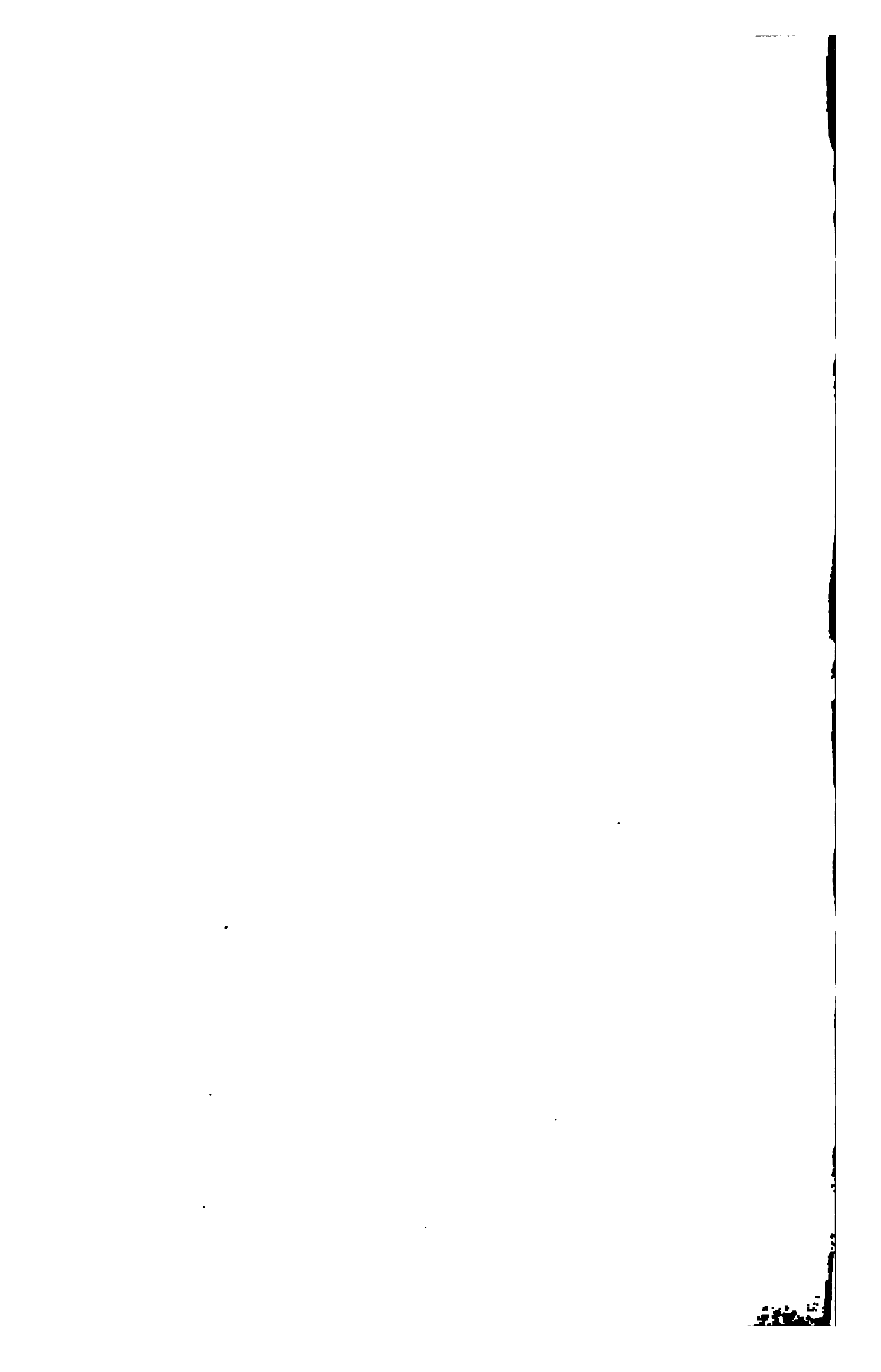

MAINE STATE BAR ASSOCIATION

NINETEEN HUNDRED FOURTEEN AND FIFTEEN

VOLUME NINETEEN

Report

OF THE

MAINE STATE BAR ASSOCIATION

FOR

1914 AND 1915

VOLUME 19

With the Proceedings of the Annual
Meeting held at Augusta, Maine
January 13, 1915

AUGUSTA:
PRESS OF CHARLES E. NASH & SON
1915

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MAINE STATE BAR ASSOCIATION

SECRETARY'S OFFICE

Augusta, Maine, January 7, 1915.

Dear Sir:

The annual meeting of the Maine State Bar Association will be held at the State House on Wednesday, January 13, 1915.

A morning session will be held in the room of the Judiciary Committee at 10.30 o'clock to receive the reports of the Secretary and Treasurer and for the appointment of committees.

The afternoon session will be held in the Senate Chamber at 2.30 o'clock with the following order of business.

1. Address by Hon. George C. Wing, President of the Association.
2. Address by Chief Justice Frank N. Parsons of the New Hampshire Supreme Judicial Court.
3. Reports of Committees.
4. Election of officers.
5. Election of new members.
6. Transaction of any other business that may come before the Association.

The meeting will conclude with a banquet at the Augusta House at 8.30 o'clock in the evening, President Wing presiding.

Among the speakers will be Chief Justice Parsons, Ex-Chief Justice Whitehouse, Judge Clarence Hale, Hon. John P. Swasey, Hon. Joseph W. Symonds and W. H. Judkins.

The Secretary must guarantee a certain number of plates. Will you fill out and mail *at once* the enclosed postal so that the Secretary may know whether or not you will be present. This is necessary in order to make arrangements.

NORMAN L. BASSETT, *Secretary.*

Maine State Bar Association

ANNUAL MEETING

Augusta, Maine, January 13, 1915.

In accordance with the call for the meeting, which was duly sent to each member of the Association, as provided by the by-laws, the annual meeting of the Maine State Bar Association was held at the State House, Augusta, on Wednesday, January 13th, 1915, at 10.30 A. M.

The meeting was called to order in the room of the Judiciary Committee by the President of the Association, Hon. George C. Wing, of Auburn.

THE PRESIDENT: The first business is to receive the report of the Secretary.

REPORT OF SECRETARY

In my report at the annual meeting in 1911 I called attention to the membership of the Association and the rules as to the payment of annual dues. According to the by-laws the dues are payable on June 1. The by-laws first provided that failure to pay within thirty days from the date terminated membership. Secretary Cornish in his report in 1894 stated that he had not followed the rule strictly but had carried the list of members and accepted dues when paid. At his suggestion the by-laws were amended by changing the words "within thirty days after that date" to "for two years in succession." I also did not follow strictly the amended rule but published all the names of the members and sent reports to them whether the dues were in arrears or not. At my suggestion at the meeting in 1911 the by-laws were amended so that failure to pay any annual due within two years should operate to suspend membership, with the right to be reinstated upon payment of arrears at time of suspension and intervening dues to date of payment.

As reported at the meeting of 1911 the listed membership was 295. At that meeting 12 new members were added. I then obtained a list of all who had been admitted to the bar in the various counties during the recent years and were not members of the Association and communi-

cated with them. At the adjourned meeting held February 8, 1911, 75 members were added. In 1913, 16 were added.

In the notices sent out in June, 1911, the attention of each member was called to the rule and to his condition as to dues. $88.00 of back dues were sent in in response to this notice. In 1912, 1913 and 1914 a similar notice was sent and in 1912 $40.00 of back dues, in 1913 $72.00 and 1914 $40.00 were sent in.

Since 1911, 16 have died, 5 have withdrawn and 88 have been suspended.

The listed membership today is 289, of which 213 have fully paid, 42 have not paid the dues for 1914 and 34 are in arrears for two years or more.

I will again admit that I have not applied the rule of suspension to the letter and have done so only after I had been led to believe that continuance of membership was not desired. I have inclined to "watchful waiting." The most of those who owe for 1914 and some of those who owe for years before 1914 will pay. I know from some of the names that non payment is due to laying aside the matter when the notice comes and then overlooking it not to a lack of interest or desire not to retain membership.

There will be a good number admitted at this session.

The Association exchanges reports with practically all the bar associations in the various states. These reports I deposit in the State Library. The Association also sends its reports

to court and college libraries. Our mailing list is about 75.

The Secretary receives various communications from other Associations and the American Bar Association. These communications are all answered and where assistance can be rendered it is given.

It has not proved possible to hold meetings each year. Members of our Association do not so readily come together each year as do members of other professions and businesses. But we do endeavor to make the meeting in the alternate years when the Legislature meets interesting. Questions of importance come before the Association. We can never afford to have the Association become weak. A spirit of helpful co-operation on the part of the members will keep it strong and growing.

Respectfully submitted,

NORMAN L. BASSETT.

On motion the report of the Secretary was approved and accepted.

THE PRESIDENT: The next is the report of the Treasurer.

REPORT OF TREASURER

Norman L. Bassett, Treasurer, in account with Maine State Bar Association for 1913 and 1914.

Dr.

1913			
Jan. 1	To cash balance from preceding year		$300 37
Jan. 9	To amount received from banquet		122 00
Feb. 1	To interest on time account Augusta Trust Co.	$2 88	
May 1	To same	2 79	
Aug. 1	To same.............	2 22	
Nov. 1	To same.............	2 12	
			10 01
Jan. 1 to Dec. 31	To dues collected, to wit:		
	For the years 1905, 6, 7, 8 and 9, each $3.00...	$15 00	
	For the year 1910.....	5 00	
	For the year 1911.....	12 00	
	For the year 1912.....	40 00	
	For the year 1913.....	230 00	
			302 00
			$734 38

Cr.

Jan. 3	By paid stamps.......	7 00	
9	Banquet expenses.....	136 63	
9	Kennebec Bar Song Books	3 20	
9	C. E. Nash & Son, ptg..	12 75	
Feb. 27	Telephone tolls.......	1 30	
Mar. 31	Fred S. Rand, Stenog...	6 00	
Apr. 9	Stamps	2 00	
June 20	Stamps for reports and notices	25 30	
	Norman L. Bassett, Secretary and Treas..	100 00	
July 15	C. E. Nash & Son, ptg..	200 50	
Dec. 2	Card case and cards...	2 45	
12	Express	1 00	
		$498 13	
31	Cash on deposit.......	236 25	
			$734 38

Dr.

1914			
Jan. 1	To cash balance from preceding year.....		$236 25
Feb. 1	To interset on time account Augusta Trust Co.	$ 2 29	
May 1	To same.............	2 39	
Aug. 1	To same.............	2 39	
Nov. 1	To same.............	3 60	
			10 67

Jan. 1 to Jan. 1 1915	To dues collected, to wit:		
	For the year 1911.....	$ 1 00	
	For the year 1912.....	8 00	
	For the year 1913.....	31 00	
	For the year 1914.....	218 00	
			258 00
			$504 92

Cr.

June 2	By paid Secretary and Treasurer	$100 00	
11	C. E. Nash & Son, ptg..	9 00	
14	Stamps	6 00	
		$115 00	
1915 Jan. 1	By cash on deposit....	389 92	
			$504 92

Respectfully submitted,

NORMAN L. BASSETT.

On motion the report of the Treasurer was referred to an Auditor; and the President appointed Hon. Fred J. Allen as Auditor.

THE SECRETARY: I will say that where there are about 350 annual reports required for the members and our mailing list, I have 500 copies printed, the additional expense not being great. From time to time I receive calls from libraries of courts and colleges, and also at times from the members who would like to make up a complete set of the Bar Association Reports; so I think that our additional reports are well worth being printed, to have a supply on hand.

THE PRESIDENT: I presume you receive reports from other Associations in exchange?

THE SECRETARY: Yes; and they are all filed in the State Library. They are very glad to get them. I should judge from the letters that I receive from the libraries of courts, universities and colleges that they are desirous of having a complete list. They ask me to go back as far as I can.

MR. BLANCHARD: I move that a committee be appointed to nominate a list of officers for the ensuing year; and the motion being agreed to, the President appointed as such Committee, Messrs. Blanchard of Wilton, Judkins of Lewiston, and Heselton of Gardiner.

On motion of Mr. Blanchard adjourned to meet at the Senate Chamber at 2.30 P. M.

AFTERNOON SESSION IN SENATE CHAMBER

THE PRESIDENT: This forenoon the members of the Association held a meeting in the Judiciary Chamber, transacted some routine business, and then adjourned to this place at this hour.

ADDRESS OF PRESIDENT WING

Gentlemen of the Maine State Bar Association:

I congratulate you on this day and this event. We have too few occasions like the present, when we are relieved temporarily from the routine of professional life—look into each others faces—enjoy friendly salutations and hearty hand clasps, when for a day detail is forgotten and appointments with persistent suitors and anxious clients ignored. I shall not in the few moments I may occupy in addressing you, and in the remarks I may make, undertake to disclose any discoveries in legal science or in the administration of the duties and responsibilities of our great profession, but shall appeal to you and each of you to endeavor to promote a closer relationship between the members of our Association, an increase in fraternal feeling each to all the rest, the cultivation not only of our own individual self-respect but our unceasing respect for the Courts whose officers we are.

So far as the Bar of Maine is concerned it has never been afflicted with that disease which has assumed in some portions of our country, I am sorry to say, a character something more than sporadic. I refer to the theory of "Recall of Judges" and the attack on an independent judiciary. It is knowledge common to us all that this disease has run its course. The attacks have been weaker and less frequent and at this time it is found only in rare instances and does not receive that support which in some cases did obtain when the doctrine was flashed upon the public as a progressive idea and one which would result in benefits to all persons having business in the Courts. Our Bar has always and with good reason, maintained great respect for our Courts and the illustrious men who have adorned our Bench. The public utterances of our members have been universally in the line of educating citizenship at large to share in that same respect. With only a few exceptions the Bench has invariably manifested a great degree of respect for the Bar. When it has failed to do so it has at once lost ground which it has only recovered by retreat. (This expression may seem paradoxical but is entirely intentional) These are in no sense unmeaning platitudes, but they are constantly recurring and continuous truths. Like the mercies of God—they are "new every morning."

In passing I have a word of criticism for the Bar. It seems to me that we are too hurried and that too little time is taken for mental and physical recreation and the genial amenities of social life. With-

in my recollection, which covers a practice of forty-seven years the coming spring, I see a much closer application to business on the part of the profession than at the beginning of my practice. Conditions then were altogether different, yet the real sane and reasonable enjoyments of life have not been improved. To be sure it is easier going from place to place in response to demands of professional business. The ease and comfort of frequent trains; larger and better libraries, both private and public wherein are gathered the thought and research of cultured minds; the improved arrangement of topics in text books and reports; legal periodicals and magazines; the printed forms of established precedents; the stenographer, typewriter and telephone are at our disposal and for our assistance, but all these seem to have failed in effecting that polished leisure which practitioners in earlier times enjoyed. It seems to me that all these improvements and many other auxiliaries have rather intensified our work and I sometimes feel have tended to commercialize to a large extent the labors of our profession. Heightened ambition and a desire for the best things in professional and private life have changed the simplicity of our wants and increased our desires for those luxurious things which once we should have regarded as superfluous but which now appear necessary for ourselves and for those dependent upon us for whom we expend our time and mental effort. I submit, knowing as we do the value of our services to the business public, that we should require from them a remuneration for our services equal to what

we now receive for less time employed, and that the time thus saved to ourselves should be devoted to the reasonable enjoyments of life; otherwise the sun of life will go down and leave us toiling. So far as my observation occurs notwithstanding the increased prices of merchandise and general services the standard fees of lawyers throughout the state of Maine for those services which require time and constant and careful attention have not materially changed during the time covered by my practice. To illustrate—the price of a writ is three dollars and fifty-four cents, the same as it was in 1821, and this is not as it should be. In other states adjoining us and in Canada above us, the fees for lawyers are from 50 to 200 per cent higher than they are in the State of Maine. It may be urged that the supply of lawyers is larger than the demand for their services, and hence the continuation of small fees, but the sober and thoughtful public realize the great importance of the labors of painstaking, well informed and careful lawyers. The people who bear the public burdens have generously kept pace with the spirit of the times and have throughout our state supplied splendid accommodations for our Courts, the preservation of public records and the humane housing and treatment of the unfortunate and criminal, meanwhile thereby showing their great confidence in and appreciation of our profession and their dependence upon our Courts for the proper protection of their personal and property rights.

Certain it is that the administration of the law and justice in Maine is conducted upon a high

plane and enjoys the great respect and entire confidence of every citizen. Bishop Potter, one of the most famous men of the last century, once consented to address a convention of women. He was greeted warmly by those in charge of the function and in a manner peculiar to himself inquired of the President "how many long winded speakers have you for today" and the President charmingly replied—"You are the only one." Congratulate yourselves upon being let off so easily by me, excuse the rambling quality of my remarks, believe me when I say that my respect for my profession strengthens every year, that I thank you and each of you for your many courtesies to me. We will now take up the regular business of the Association.

(Applause.)

THE PRESIDENT: In conversation with several members of our Association—an informal happening——it was suggested that we, like other Associations or Associations in other States, should invite some gentleman from another State to address us on the occasion of our annual meeting, and the general desire was expressed that the Chief Justice of New Hampshire should be invited. I was requested to write a letter to him and ask him to address us today, and to be our guest. I had never seen Chief Justice Parsons, but when I received his letter I at once felt at ease; I felt acquainted with him; and you will feel toward him, I know, the same as I did on getting his letter couched in such beautiful language. Chief Justice

Parsons was in college with our Chief Justice Savage who is unable to be present here today, very much to his regret. I think I ought to say to you that I saw Judge Savage yesterday in the afternoon, and he told me that yesterday was his best day since his recent illness, but that he was not able to make the trip here no matter how much he might regret it. Chief Justice Parsons is here, and I now introduce him to you.

(Applause.)

Frank N. Parsons

ADDRESS OF CHIEF JUSTICE PARSONS

Mr. President and Members of the Bar Association of the State of Maine.

Recall of judges and the recall of judicial decisions are two propositions which have been attacked with more or less violence, generally more, upon many occasions since their promulgation a few years ago. Within a year I have listened to public addresses from members of the highest courts of two of the leading states of the Union in which the so called doctrines of judicial recall and the recall of decisions have been each assailed with the greatest asperity and characterized as mere ill-natured attacks upon judicial independence and as utterly illogical and indefensible.

The physician who finds his patient with accelerated pulse-beat and fevered brow does not spend his time in denouncing these conditions as unnatural and physically wrong nor does he attack these manifestations directly. They are to him symptoms of wrong conditions somewhere in the bodily economy. His effort is to diagnose the wrong which has produced the evil symptom, confident if that can be removed the unnatural symptoms which he regards as merely flags of distress raised by nature in peril will be removed.

Instead of denouncing the symptom which may be the illogical outcry of untrained minds a scien-

tific consideration of the situation looks beyond the surface indication of such demands in the endeavor to ascertain whether such unnatural propositions may not indicate some wrong in the judicial economy which may be made right. I shall ask you this afternoon to look with me at one or two of the customary methods of administering justice to see if we may perhaps find room for some improvement. The view of course in the time limited can only be made in a general way and I shall not trouble you much with detail or with citation of authority. What is practically the recall of judges we have always had with us in New England in our removal by address. As we have lived under this for over a hundred years we can hardly attack the principle for its novelty. Our criticism must be applied to the manner of the exercise of the power not to its existence. In the absence of some specific instance of wrong done or proposed in the exercise of this power discussion of the propriety of the exercise of an unused and almost forgotten power seems uncalled for.

The final appeal with us upon all questions is to the ballot box. If no question is settled until it is settled right, what is right is the final view of the majority as so expressed. There is nothing new in the recall of judicial decisions by vote of the people. The Dred Scott decision was recalled by amendment of the Federal Constitution. The amendments so adopted merely expressed through the machinery provided therefor the will of the people as declared at the ballot box. The people

govern and the only valid order or decree which their agents, legislators, executives or judges can make is one which declares their will. The court which sets aside a legislative decree, a statute because inconsistent with or forbidden by the fundamental law is as clearly declaring the people's will as the moderator who announces the count of the vote at the ballot box. If either makes a mistake and declares as the people's decree what is not their will the error is correctible by the sole source of power, the vote of the electorate. We cannot criticise the correction of legislative or judicial error by popular vote because the final determination of all questions by the people is the foundation upon which the government rests. The machinery which has been provided for the purpose has proved sufficient in the past. The proposition when examined therefore relates merely to the method of ascertaining the people's will. The founders of the state while they trusted the electorate in the end, feared the result of hasty and ill considered action. The scheme devised, by the delay of intervening action, sought the sober second thought of the people as the sure foundation of the rights of all. The demand for instant submission to popular vote of a supposed judicial error is illogical and erroneous only in so far as it fails to take the necessary time for instruction and consideration by the court of last resort. The final difference upon this question is therefore merely one of procedure not of principle.

By what rules and in what way shall the decree be obtained and made?

There has always been a method under which the court of the people could be approached and a final decree obtained, a decree conclusive upon every department of the government. The demand for immediate relief indicates delay in administration as one of the wrong conditions and the fact that a different result is anticipated indicates a feeling that the results of judicial administration have failed in some respect to satisfy the conscience of the people.

The bench and bar constitute the machine devised for the administration of justice, for the settlement of controversy. Since all engaged in that business are presumed to be experts, the natural conclusion would be that by application to these experts an existing controversy would be better settled than in any other way.

If a man has a diseased member, a leg or an arm that must be removed he would be regarded as of unbalanced mind if he applied to any one to remove the diseased portion of his anatomy except to one of experience in such operations. If such a sufferer should call on a neighbor even one having some experience in cutting flesh as a butcher to cut off his arm or leg instead of taking the matter to a surgeon, it would be concluded that he suffered from mental as well as physical affliction. Yet if a man has a controversy with his neighbor it is regarded as highly praiseworthy for the two to lay their difficulty before a third and to abide by his judgment though the neigh-

and a judge and had been honored with the highest office in the gift of the nation in a speech before some such organization as this characterized as disgraceful the administration of criminal law in America. So broad a criticism from such a source naturally led to investigation. The foundation of the charge was thought to be the delay in administration through the overturning by courts of last resort of the work of the trial courts necessitating repeated trials of the same case. We were asked in New Hampshire to ascertain the number of reversals by the supreme court in criminal cases during a certain five year period. We made the investigation as I presume some of you did here. We found the charge entirely without warrant. I have no doubt the same was found to be the fact as to all the state courts of New England. Of all the criminal cases less than one per cent. reached the supreme court. No verdicts were overturned. That perhaps was due to the simplicity of our procedure under which difficult questions of law may be determined in advance of the trial. But in less than one tenth of one per cent. did the contentions of the state fail to be sustained.

In a just criticism of the criminal law as it is administered sight must not be lost of the large number of controversies involving charge of crime, which do not attract public attention, but which are promptly, expeditiously and justly determined but which for that very reason fail to attract public attention.

Delay and expense are the outcome of local conditions but one cause of the failure of courts to produce justice is too great a reliance upon logic. "Reason" says Coke, "is the life of the law; nay the common law itself is nothing else but reason." Again he remarks, "The law which is the perfection of reason." Reason here has been interpreted logic and, reasonably, logical, which is a very different thing from reasonable in the sense of justice. As civilization has advanced ideas of morality and justice have kept pace with the growing intelligence of the people, and as the logical side of the mind is not all there is to humanity in which there is an emotional side as well, logic based on the conceptions of justice of earlier days will not always produce a result which will appeal to the conscience of the average man. An unconscientious judgment is a wrong judgment however logically obtained. There is no better rule by which to test the result of logical reasoning than the one we were taught when we were introduced to Euclid. *The reductio ad absurdum.* If the result is unjust as between man and man, not reasonable in that sense, it is wrong no matter how perfect the logic seems.

Take the familiar rule that the payment of part of an admitted ascertained debt, no matter upon what terms offered and accepted, can not amount to a satisfaction of the whole debt. This rule was supposed to be laid down by Lord Coke over three hundred years ago. It seems perfectly logical, the debtor who pays part of his debt only does what he ought to do and his doing

should follow public opinion, an utterance which another speaker later in the day sought to correct by saying the courts should lead public opinion. These statements betray a faint idea of the real point that upon such questions the courts must correctly determine the fact of reasonableness in view of the thought of the present day. The evidence by which to determine this question is not all to be found in law reports. The judges who can successfully gather to themselves the spirit of the times and correctly find the fact will both lead and follow public opinion.

While most propositions that have been advanced looking toward the improvement of judicial procedure relate to what is more definitely described as the rules of practice, there is a branch of what is properly procedure as to which so far little attention has been paid. I refer to the rules for the production and admission of evidence. The so called rules of evidence are really rules of procedure. They tell how to carry on the controversy. There is a feeling in the profession that there may be something antiquated in the methods by which we seek for truth and that possibly the old ways are not necessarily the best that can be found or invented. This is in the air. At the Bar meeting in Washington in October, which I had the good fortune to attend, the subject was mentioned by some of the speakers as something where improvement might be made with the proviso however that none of the old land marks should be disturbed. Improve the rules of evidence but don't change anything.

Evidence is anything which tends to produce in the mind a conviction for or against a proposition in controversy. It is an old, sound and reasonable rule that always the best evidence of which the matter is capable shall be produced. This means that the matter by which a conviction is sought to be obtained must be relevant and the best procurable. Wigmore starts his exhaustive treatise with substantially these propositions and then takes five large volumes to explain when relevant matter is not evidence. The rules of evidence except when they state an exception to some other rule are not rules of admission but rules of exclusion. The bulk of the treatise is to tell us what is not rather than what is evidence.

In investigating an unknown or uncertain question it would seem reasonable that we should have the aid of everything that can throw any light on the subject. As the rules of evidence are rules of exclusion, improvement in them means the admission of matter now excluded.

Lawyers are creatures of habit and precedent. Fifty years or more ago, the lawyers of that day shook their heads in grave doubt when interested parties were admitted to testify. They were as shocked as you are now when it is suggested that privileges which exclude the truth should be waived when necessary to do justice and that when nothing better can be had matter that comes at second hand, hearsay, may help. Because it has never been so done one's mind shrinks from considering as evidence statements however clearly proved that are not made under oath or subject to cross examination.

But as a practical proposition, has the oath any value in compelling a witness to tell the truth and as to cross examination, are not more cases lost than are won by it? That the statement was not under oath, was not subject to cross examination, is rendered doubtful by second hand repetition goes to its weight as evidence not to its relevancy. Whether in a particular case such a statement will aid the trier of fact is a question of fact. Much hearsay is now admitted because made under circumstances that judges have thought entitled it to some consideration, that is by a general rule what is a question of fact is made matter of law. Men in their own important affairs of life act on information that comes to them unsworn and without cross examination. If you are examining into the character of one to whom you may intrust your daughter or your fortune, do you shut your ears to every statement that does not reach you sanctified by an oath and purified by cross examination? Of course you do not, you weigh everything. Now when you are merely deciding a controversy for some one else why should you be hampered with half truths? The witness is sworn to tell the truth and the whole truth, but when he escapes from the chair after vainly attempting to tell his story in the natural way with some reference to what he thought and said as the action proceeded all of which is rigidly and often improperly excluded with the caution to tell what he did, not what he said, or thought, he usually regards his story as told to be far from the whole truth. What remedy

can be found? The easiest way to decide a question is by a rule. For example, at one time the rule was that the party who had the larger number of witnesses to a point prevailed on that point. Whether in a given case the admission of a particular piece of relevant evidence will do more harm than good is a question of fact, not a question of law; but after, in similar or nearly similar situations, judges have repeatedly decided the same way the repeated decision of fact is understood as a statement of law and hence becomes a rule. The qualifications, limitations, exceptions to the rule and exceptions to exceptions which require an encyclopedia to state are enough to establish that, in trying to bend a rule of law to varying facts, we are in error in treating the matter as law at all. A decision of fact will turn one way or the other as the evidence tips the scale. It may be one way today and the other tomorrow because of a slight change in the evidence, but if we make a rule of it, we must have a rule for every change in the evidence. These rules acted on so long have been regarded with such veneration as to be incorporated in statutes and constitutions. If a crime has been committed and A is suspected or charged with it, his statement that he did or did not do it is certainly relevant and the best evidence. Why not call him in and ask him? Because for the general good it is thought no man should be compelled to accuse or furnish evidence against himself. Why not? If it be true in most cases that he should not, may there not be cases where for the protection of the whole people the

individual must be sacrificed? Does the individual owe a greater duty to protect his own life than he does to protect society? If the accused could be required to tell his story on trial the temptation to force it out of him by inquisition; to apply the so-called third degree would be greatly diminished. His statements to police and detectives might be excluded by statute. This would prevent perjury. The person unjustly accused would have much greater opportunity to fairly state his case publicly under the protection of the court than when first overwhelmed by the disgrace of arrest. He may testify now; but the provision that comment may not be made upon his refusal to testify or the fact of such refusal considered against him is a protection in form not in fact. If the state could call him as a witness, the refusal to do so would balance to some extent his own failure to testify. If the right of the state to call the accused as a witness would tend to convict some guilty persons who now escape that is a reason for permitting it. Counsel may not testify to what his client has told him, but may there not be cases where a public duty of such disclosure could be found?

Hearsay is not admissible, though relevant, but as a rule the principle is honeycombed with exceptions because of the numerous cases in which it is clearly the only evidence possible. We tell jurors to judge a reasonable doubt by asking themselves whether the doubt they entertain would be sufficient to control them in the important affairs of life. The guide we hold up to the jury in neg-

ligence cases is the conduct of the average man as the jury know it. Why should not the law present to them for their guidance in settling a controversy for others the considerations which influence them in their own affairs. If the evidence is relevant, has some tendency to prove the issue, is such as men generally would take into consideration, which is only another way of saying that it is relevant, why should it not be admitted if in the particular case its admission will promote justice, that is, will not do more harm than good in fact. Written documents were once construed by rule. Certain words always meant the same thing. The testator must use certain words to express a particular purpose. This was easy except to prevent too gross injustice the rules were constantly changing. But when it was seen that the real question was what the testator meant by the words he used, not what the rules said he ought to have meant the rules were of no further use. When it was discovered rules of practice were only intended to promote the discovery of justice the rules fell by the wayside and procedure became what justice requires. When it shall be fully understood that evidence is only the material for the production of justice, will not the rules that limit its use become equally useless? If we reach that point the question will be as to the admission of relevant evidence now excluded by rule "what does justice require in this case?"

Many of the exceptions to the rule excluding unsworn declarations of third parties arise from

the necessity of the case or because they are made under such circumstances as impart verity:—such as dying declarations, spontaneous exclamations, declarations by deceased owners of land as to the extent of their possessions.

If a jury is trying a case of damages for the loss of an arm or leg the one thing the jurors would like to know is what other jurors have given for like arms or legs. What is the going price of arms or legs? But such evidence is excluded. The jury are told the damages are to be computed as compensation to this plaintiff for his loss under the circumstances disclosed, because the sum that ought to be paid in one case is no criterion by which to determine how much should be paid in another. But a judge who has presented to him the question whether a rule of exclusion can or ought to be dispensed with in a particular case rushes to the books to see what other judges thought ought to be done in a case as near like the one before him as possible, i. e. he seeks for a rule by which to decide a question of fact.

I do not suggest the abolition of the rules of evidence. They should remain to govern the trial so long as justice is done thereby, but I advocate giving power to the presiding judge when it appears to him to be necessary to prevent injustice to suspend any rule which would prevent the jury from hearing any relevant fact in whatever manner presented.

Something has been done in this direction.

In the act of the New Hampshire legislature creating the Public Service Commission an appeal

is given to the supreme court. Upon such appeal it is made the duty of the commission to transfer all evidence in the case appealed to the court and the law provides, "All evidence transferred by the commission shall be and all additional evidence may be considered by the court regardless of any technical rule which might have rendered the same inadmissible if originally offered in the trial of an action at law." I have not had time to make an exhaustive examination but I am told that Commissions of this character are not generally bound in their investigations by the common law rules of evidence. This must practically be so for knowledge of such rules is not considered essential to qualification for appointment on such a board. When we reflect upon the great and constantly increasing power both legislative and judicial that is being conferred upon bodies of this character we must be impressed with the difficulty of maintaining the reputation of our judicial machine as an investigator of truth fettered by the bonds of an antiquated system of evidence as against other bodies of great power at liberty freely to conduct their investigation of disputed facts.

It is remarked by those who have observed trials in England and compared them with our own that though the rules of evidence are the same there a degree of tolerance prevails unknown here, that objections to evidence are rarely made, and the courts of appeal are not burdened with questions of evidence as ours are. It is the impression of some writers that reliance is placed upon the

judge to remove from the minds of the jury the effect of evidence which they ought not to hear.

The delay of justice by destroying trials through a difference of view as to the competency of evidence could be cured by making the ruling of the trial judge final upon all questions as to the admissibility of evidence. But that would not give the aid needed to do justice. What justice needs is the removal of the blinders inherited from the usage of an age when public opinion sanctioned hanging as a proper punishment for theft, forgery or like crimes against property. Let in the light. I submit to the lawyers of the Maine Bar whether this may not be done cautiously, not so rapidly as to daze our eyesight by the sudden glare but so that in the end justice may be administered in the full daylight of the whole truth.

(Applause.)

THE PRESIDENT: The next item is the report of the Auditor, Mr. Allen:

MR. ALLEN: The auditor to whom was referred the report of the Treasurer for the year 1913–1914 reports that he has examined the books, vouchers and accounts of the Treasurer, and finds them, and the report submitted to the Association, correct. The cash balance in the treasury the first of the year is $389.92; a gain of $89.00 over the balance on hand at our last meeting.

On motion, the report of the Auditor was accepted.

THE PRESIDENT: The next is the report of the Committee on Membership.

MR. BLANCHARD: I present the following names for membership:

Androscoggin County

H. E. Belleau . . .	Lewiston
Benjamin L. Berman .	Lewiston
Edgar M. Briggs . .	Lewiston
D. J. Callahan . .	Lewiston
Charles B. Carter . .	Lewiston
Isaac B. Clary . . .	Livermore Falls
John D. Clifford, Jr. . .	Lewiston
W. H. Clifford . . .	Lewiston
Henry E. Coolidge . .	Lisbon Falls
Edward J. Hudon . .	Lewiston
L. A. Jack . . .	Lisbon Falls
Fred H. Lancaster . .	Auburn
Dana S. Williams . .	Lewiston

Aroostook County

Herbert T. Powers	Fort Fairfield

Cumberland County

Roscoe T. Holt . .	Portland
Stuart O. Symonds . .	Portland

Franklin County

Thomas D. Austin . . Farmington
Kenneth A. Rollins . . Farmington
John Allen Sweet . . Farmington

Kennebec County

William Penn Whitehouse Augusta

Lincoln County

William N. Titus . . Alna

Oxford County

Spaulding Bisbee . . Rumford

Penobscot County

James A. Cahners . . Bangor

Piscataquis County

Robert E. Hall . . . Dover
Edgar C. Smith. . . Foxcroft

Somerset County

Elmer W. Sawyer . . North Anson
James H. Thorne . . North Anson

THE PRESIDENT: Your Committee on Membership have reported twenty-seven names for membership, and under the rule they may be all elected to membership on a single motion.

Is it your pleasure, gentlemen, that the men whose names have been read be members of the Maine State Bar Association?

It was agreed to.

THE PRESIDENT: A Committee was appointed at the forenoon meeting to report a list of officers of the Association. Is that Committee ready to report?

MR. JUDKINS: The Committee beg leave to submit the following names for officers of the Association for the ensuing year:

OFFICERS OF THE ASSOCIATION

President

Fred J. Allen . . . Sanford

Vice-Presidents

John A. Morrill . . Auburn
John B. Madigan . . Houlton
Augustine Simmons . . North Anson

Secretary and Treasurer

Norman L. Bassett . . Augusta

Executive Committee

C. N. Blanchard . . Wilton
Ralph T. Parker . . Rumford
Raymond Fellows . . Bangor
John W. Manson . . Pittsfield
Job H. Montgomery . . Camden

Committee on Membership

George C. Wing . . Auburn
Herbert T. Powers . . Fort Fairfield
Roscoe T. Holt . . . Portland
J. Blaine Morrison . . Phillips
C. H. Wood . . . Bar Harbor
Alan L. Bird . . . Rockland
Frank G. Farrington . . Augusta
Cyrus R. Tupper . . Boothbay Harbor
F. R. Dyer . . . Buckfield
M. Laughlin . . . Bangor
Charles W. Hayes . . Foxcroft
John J. Keegan . . Bath
C. O. Small . . . Madison
R. F. Dunton . . . Belfast
Frederick Bogue . . E. Machias
Aaron B. Cole . . . Kittery

Committee on Law Reform

John A. Morrill . .	Auburn
Charles F. Libby . .	Portland
E. C. Ryder . . .	Bangor
B. F. Maher . . .	Augusta
Edward F. Merrill . . .	Skowhegan

Committee on Legal History

J. L. Reade . . .	Lewiston
Ira G. Hersey . .	Houlton
Robert T. Whitehouse .	Portland
E. E. Richards . .	Farmington
L. B. Deasy . . .	Bar Harbor
Norman L. Bassett . .	Augusta
Arthur S. Littlefield . .	Rockland
James B. Perkins . .	Boothbay Harbor
Ralph G. Parker . .	Rumford
J. Willis Crosby . .	Dexter
Henry Hudson . . .	Guilford
Joseph M. Trott . .	Bath
Fred F. Lawrence . .	Skowhegan
Ellery Bowden . . .	Winterport
L. H. Newcomb . .	Eastport
James O. Bradbury . .	Saco

Committee on Legal Education

Tascus Atwood . . .	Auburn
R. W. Shaw . . .	Houlton
Benjamin Thompson. .	Portland
John Allen Sweet . .	Farmington

H. E. Hamlin . . .	Ellsworth
Carroll N. Perkins . .	Waterville
Reuel Robinson. . .	Camden
Emerson Hilton . .	Damariscotta
A. S. Kimball . . .	Norway
Bertram L. Smith . .	Patten
W. E. Parsons . . .	Foxcroft
George E. Hughes . .	Bath
George G. Weeks . .	Fairfield
Wm. P. Thompson . .	Belfast
George A. Curran . .	Calais
Willis T. Emmons . .	Saco

On motion, the report of the Committee was accepted.

THE PRESIDENT: What action will you take with reference to the election of the officers named?

MR. BLANCHARD: I move that the Secretary be instructed to cast the ballot for the gentlemen whose names have been read for the several places.

THE PRESIDENT: It is moved and seconded that the Secretary be instructed to cast a ballot for the gentlemen whose names have been read for the several places. Is that the pleasure of the Association?

Agreed to.

THE SECRETARY: The Secretary has attended to his duty and has cast the vote of the Association for Fred J. Allen, President, and the other officers named in this list.

THE PRESIDENT: I have a letter that I desire to read. It is on the stationery of Eva. E. Bean, Attorney at Law, Old Orchard, Maine. It is addressed to me as President of the Association, and bears date the 9th instant.

January 9th, 1915.

Hon. George C. Wing,
President State Bar Association,
Auburn, Maine.

Dear Sir:-

You are no doubt familiar with the fact, that at the recent meeting of the American Bar Association in Washington, the applications of three women, for membership in the Association, were laid on the table. These applications were sent in on blanks, which had been forwarded us by the Secretary, in my case, he evidently thinking Eva was a man's name.

While I was in Washington, Mr. Ernest Morris, a former president of the State Bar Association of Kansas, told me that several of the States were to adopt a resolution at their next meeting, favoring the admission of women to the national Association, and he thought if many of the States would do likewise, it would have an effect upon the disposition of our applications at the next meeting of the American Bar Association. It

seems most unfair, that after we are admitted to our State Association, we are denied membership in the national body.

I took the matter up with the member of the membership committee from Maine, Mr. Appleton, and as he is out of the State for several months, he suggested that I write some official, who would surely be present at the next State meeting, and see if some action along the line suggested might be taken at the meeting next Wednesday.

In time, there will naturally be other women from Maine, besides myself, desiring membership in the national association, and if we could have the backing of our State Association, I feel it would help materially.

Mr. Alexander of the membership committee assured me that we were bound to get in, in time, but that the only handicap now was simply the matter of sex.

Don't you think, with the agitation of equal rights all over the country, it would be a good idea for the Association to put itself on record? I regret that I cannot attend the meeting personally, next Wednesday, but as I cannot, will you kindly introduce the matter, and see what the feeling of the Association is towards this question?

Thanking you for your courtesy in the matter, and for any favors you may be able to extend, I am,

Very truly,

EVA E. BEAN.

Eva E. Bean is a counselor at law at Old Orchard, and is a member of this Association; her name appears in the printed report. I never saw Miss Bean; but I think we must face this matter and take some action upon it. I await any suggestions from any member of the Association. The bight of it seems to call for the adoption of a resolution favoring the admission of women to the National Association.

MR. ANDERSON: I move that the letter be placed on file with the Secretary, and that we do nothing with it until there is more demand for it.

MR. MORRILL: I was about to move that the communication be referred to the local Council of the American Bar Association of the State of Maine, which consists of a Vice President and three or more members of the Bar.

MR. ANDERSON: I will withdraw my motion.

THE PRESIDENT: The first motion is withdrawn, and Mr. Morrill makes the motion that the matter be referred to the local Council of the American Bar Association of the State of Maine. Is it your pleasure that Mr. Morrill's motion have a passage?

Agreed to.

MR. SPRAGUE: If it is in order at this time, I am sure we have all been highly entertained, and I move that we pass a rising vote of thanks to Chief Justice Parsons of New Hampshire for his very interesting, able and illuminating address this afternoon.

Agreed to.

THE PRESIDENT: That concludes the items of business on the formal notice issued by the Secretary, and the meeting is now open for discussion of any proposition with reference to a future meeting, making provision for discussions at a future meeting, or for any matter that any member has that should be presented at this Legislature for action. If any one has any idea to suggest with reference to the future conduct of the meetings of this Association, present them at this time.

Do you know of any matter, Mr. Bassett?

MR. BASSETT: I do not.

MR. JUDKINS: I would not take up the time this afternoon if it was not comparatively early. I would like the views of the distinguished members of this Bar, and the Court, on this proposition, which I think is somewhat in line with the very interesting address that we have had this afternoon, really presenting to us novel views—new views at least—in regard to evidence; but views which I think have been in our minds,

and I think we have been conscious more or less of the need of some such clear thinking as we have had in this beautiful address this afternoon. As a very private and humble member of the Bar, two years ago I asked the Chairman of the Judiciary Committee if he would not take into consideration this proposition for the securing of evidence: that in case of a suit pending in court the plaintiff in addition should have the right to file in court a series of questions touching the facts of the case for the other party to answer and that if any exceptions were taken to any particular interrogatory so filed they should be submitted to the Judge of the court, who should pass upon the propriety and relevancy of any question therein submitted, and that after it had been passed upon by the Judge, if such objection was made, the other party should be compelled to answer any question of fact within their knowledge that was material or important to the issue involved in the trial of the case. That was not quite taken up this afternoon perhaps, but it is in line with what was said. The object being to avoid the expense of proving facts which, if the other party were compelled to admit them, they could readily admit in answer to such questions. I think I have perhaps indicated what I mean; the object being to facilitate the securing of facts, and to secure them without so much expense as is now necessary in the case of depositions. I suggested that to the Chairman of the Judiciary Committee. He advocated that himself; but he did not secure the favorable

consideration of the Committee. On one occasion I was talking with Chief Justice Savage in regard to it, and he, to my surprise, told me that Massachusetts had a statute of similar influence. Perhaps it is too early, or there is not time enough to digest such a proposition; but now the Legislature is in session, and if there is anything in the proposition, is there any reason why we might not follow the advance of so good a State as Massachusetts? We have followed her legislation for a great many years, almost from the beginning. I should be glad to see the matter considered, and I would be glad, if there is time enough, to have a little informal talk and discussion on that line if it is not out of order and it will not be disagreeable to the members of the Association.

THE PRESIDENT: You have heard the suggestions of Brother Judkins. I think he has explained fully the import of his proposed statute. Has any gentlemen any views to express on the subject? The President of the Senate, Brother Hersey, was a member of the Judiciary Committee. I would like to hear, and I think the others would, some suggestions from him.

MR. HERSEY: Mr. President, my recollection of the matter is that somebody—I think perhaps Brother Judkins— called the attention of the members of the Judiciary Committee to the matter without putting it in the form of any bill to amend the law, and in the shuffle of course we did not consider the matter.

MR. JUDKINS: I submitted form of bill.

MR. HERSEY: It occurs to me now that we did not consider it seriously any way. It is a serious matter to change the rules of evidence. I presume you could make the plaintiff or defendant your witness any time that you want to, by calling him to the witness stand, or having his deposition taken; but forcing them to testify by making a statute is a serious proposition. A witness on the stand is usually obliged to answer all proper questions after you get him there. Of course he can refuse to testify to anything that may disgrace him, or expose him to ridicule or crime, or anything of that kind. It is a matter I have not given any serious attention to. I could not enlighten the members of this Association any at the present time with anything I could say on the matter. I hardly know where the evil is, and therefore I have not in my mind any special remedy. Mr. Judkins has not exactly brought to our attention today the evil of the present rules in this State.

THE PRESIDENT: Often times I think you have had in your practice a defense interposed against a claim, we will say, of some sort,—a note or something of that kind, or bond,—that suit is brought upon for a client that might live in New York, and it would obviate the necessity perhaps of proving the execution of the paper by bringing a witness from a long way off. I think that is what was in the mind of Mr. Judkins.

MR. JUDKINS: It was one of the instances. Those who happen to have claims from New York, we will say, come in. They simply stand you off, because you have got to go to the expense of a deposition to prove your case. They will keep it running along at great expense to your client and great bother to you, and to the detriment of justice, and to the injury of the good name of the Bar and of the administration of justice. Another reason is, it was in line with the address, if I may be allowed to call attention to it. Why should not we have the truth from any source? Why should not the defendant, for instance, give to the plaintiff the truth if he has it? What is there to be afraid of? Why should not the plaintiff give to the defendant the truth if he has it? Why should we stand off and play a game of checkers, or a game of chess, and see who has the skill to thwart the ends of justice by some concealment of the evidence or by some refusal to produce it.

MR. HERSEY: I would remind Brother Judkins that at the last Legislature we did enact a statute saying in substance that where a claim was made in court on a debt, in a matter outside of the State, that an affidavit would be prima facie evidence to make out a case on the part of the plaintiff. If you go still farther and want the defendant to expose all his defense he has to it,—whether he is going to raise the statute of frauds or statute of limitations, whether he has paid it or not, or is going to claim he has paid it, I don't know how far we can go.

THE PRESIDENT: I would like to ask Chief Justice Parsons what the practice is in New Hampshire.

CHIEF JUSTICE PARSONS: It is thirteen years since I have practiced law, and I have not had much to do with the trial of cases. We have no such statute as Mr. Judkins suggests.

THE PRESIDENT: We use to have specifications of defense required to be filed within a certain time after the first term,—something of that sort,—specifications of defense which the defendant was compelled to rely upon; but those were out of fashion a good many years ago, and were all repealed.

The Chair is ready to entertain any motion in regard to the matter.

MR. JUDKINS: I should be glad to hear from Chief Justice Whitehouse if he would be kind enough.

MR. WHITEHOUSE: I think I will ask to be excused. Not having examined the matter I should not wish to make any public utterance.

THE PRESIDENT: I suppose it is within the province of any gentleman, if he desires, to present the matter to the Judiciary Committee of the present Legislature, and if the bill is carefully drawn it will no doubt receive suitable attention

from that Committee. I am glad that the matter has been discussed, because it may enable the matter to have friends attracted to it.

What other suggestions has any gentleman to make with reference to practice?

MR. WHITE: I am not altogether satisfied with the disposition made of the matter brought to our attention by our sister from Old Orchard. I am entirely satisfied with the reference of that matter to the Council, but it seems to me that this Bar Association, if it admits women to membership, must logically and reasonably take the position that they should be admitted to membership in the American Bar Association; and in order to bring the matter before the body I make the motion that the Secretary of this meeting be authorized to advise the Council to whom this letter was referred that it is the sense of this meeting that women should be admitted to membership in the American Bar Association.

MR. MORRILL: Would you not confine that to the States where women are admitted to the Bar?

MR. WHITE: I will accept that as an amendment.

MR. HERSEY: Should not the motion be that they should not discriminate on account of sex? We do not ask them to admit them because

they are women any more than we would ask them to admit men; but there should be no discrimination on account of sex.

MR. WHITE: My motion was not that any particular woman should be admitted to membership, but that women should be entitled to membership.

THE PRESIDENT: As many as are in favor of Mr. White's motion will say aye.

Agreed to.

MR. JACK: I have a proposition in mind that I would like to call up. I don't know as the Association cares to take any action, but in the face and eyes of our first speaker here, Mr. Chief Justice Parsons of New Hampshire, he has led us along a channel of new thought,—at least he has brushed a little dust off the thought we previously had. Now I would like to raise the suggestion here: in equity hearings where a question or issue has been framed for the jury, it appears to me—I may be wrong— that the decision of the jury on all questions of fact should be final, unless the presiding Justice at that term sets it aside, rather than to have it removed farther on,—to be taken up some six months or a year afterwards by parties who are not as familiar with the issue. That is the way it appears to me. I may be wrong; but when I read some of the decisions, and especially one by Judge Powers,—he says that the mere

statement or the bill of facts as they come up to the Law Court does not give that body so good an opportunity to get at the true facts—and that seems to be the proposition we have in mind; what we are aiming for—as the jury have that hear the case, see the witnesses and notice the prejudice. Now of course the jury neither see nor hear anything that the Court does not. If that jury sees something that is of value there at that time in the consideration of the case why does not the Court, and if they get a value that is lost in transit why is not the Court at that time the proper one to exercise the authority to usurp the function of the jury and set it aside. That is the question I had in mind.

THE PRESIDENT: You hear the suggestion of Brother Jack. Any other remarks to be made upon that particular subject?

MR. HERSEY: I understand that means no appeal from the decision of the jury and the Judge presiding upon the question of fact?

MR. JACK: The presiding Justice would set their judgment aside.

MR. HERSEY: But no appeal to the Law Court from him?

MR. JACK: Not on the question of fact. As I understand it he would simply be exercising the function that the Law Court exercises farther on,

so we would not be establishing any new precedent with reference to setting anything aside; we would simply put the burden on the fellow that ought to know as much about the case as anybody.

THE PRESIDENT: Is there anything more to be said upon the subject? There is no motion before the Association at this time.

If there is no further business the motion to adjourn is in order.

On motion of Mr. Blanchard, the meeting of the Association then adjourned.

Adjourned.

A true record.

Attest: NORMAN L. BASSETT,
Secretary.

POST PRANDIAL

President Wing in introducing Justice Leslie C. Cornish, who in the absence of Justice Albert M. Spear, responded for the Court, said

A father when he whales his erring son says, as he tries to keep from laughing, that he would rather take the punishment himself, I imagine that the Court feels very much the same when he decides against us, but for the time being he leads us not into temptation (except as the desire to retaliate arises) and delivers us from evil—that is the evil that would beset us if we did,—sets aside the verdicts rendered in our favor and refuses to set aside those rendered against us, thus demonstrating in a perfectly logical manner that both sides of a case cannot prevail at the same time. Its decisions, however, are a matter of record, and when causes are finally ended we one and all point with pride and satisfaction to the contents of one hundred and twelve volumes of the Maine Reports and with one accord declare them—the best ever. Since the time of the Normans a crier has made proclamation of the coming in of the Court and his willingness to give hearing to all persons having

Maine State Bar Association

Dinner

P. Mellen

CHIEF JUSTICE 1820—1834

Augusta House, January 13, 1915

Menu

GRAPE FRUIT, MARASCHINO

TOMATO BOUILLON WITH CREAM

SOUP STICKS

RIPE OLIVES — STUFFED CELERY

FRIED SMELTS, TARTAR SAUCE

POTATO CHIPS

ROMAN PUNCH — CIGARETTES

FILLET OF BEEF

FRIED PARSNIPS — MASHED POTATOES

ASPARAGUS TIPS ON TOAST

LOBSTER SALAD

MARSHMALLOW ICE CREAM

PETITS-FOURS

ROQUEFORT CHEESE — TOASTED CRACKERS

DEMI TASSE — CIGARS

Post Prandial

HONORABLE GEORGE C. WING, Presiding

Responses by

Chief Justice Frank N. Parsons

Ex-Chief Justice W. P. Whitehouse

Judge Clarence Hale

Justice Albert M. Spear

Honorable Joseph W. Symonds

Honorable John P. Swasey

Honorable Wilbur H. Judkins

CHIEF JUSTICE PARSONS: "You are aware, Mr. Mellen, that there are authorities on the other side."

MR. MELLEN: "Yes, yes, your Honor, but they are all in favor of my client."

Willis's Courts and Lawyers of Maine, page 167

business. On this occasion the procedure is partially reversed. Proclamation is made that the Court is present and that we are ready to listen to the Court. Mr. Justice Cornish will speak for the Court and does not require introduction.

Justice Cornish concluded his remarks as follows:

In these days, when the iconoclasts are rushing through the temples of justice as well as through the temples of statecraft and religion, throwing down the idols, as did the Hebrew King, with the single word "Nehustan"—a bit of brass, the New England conception of the rights of man needs to be guarded as jealously as the Ark of the Covenant. But those rights can only be guarded and guaranteed in a community where courts of law and of equity are maintained, dealing out even-handed justice and giving to each his due.

The tides in the great ocan of democracy may surge fiercely this way and that, but hope for the safety of our institutions and of our people lies in the courts, and by the Courts I mean both bench and bar, standing as a bulwark against oppression, license and disregard of law, from whatsoever source or under whatsoever guise they may appear. And this means that careful regard for the ever changing conditions and surroundings of life that causes the eye of the true jurist to look to the present and the future as well as to the past, for no man should attempt to lay confining hands upon the evolution of the common law.

Over the entrance to the beautiful Court House in the city of Worcester, Massachusetts is this inscription: "Obedience to Law is Liberty." Pitt expressed the same idea conversely when he said, "Where Law ends, Tyranny begins." That motto should be above every court house in our land and should be engraved upon every heart. That way lies safety. But within that same court house on the wall of the rotunda is a more striking inscription still: "Here speaketh the conscience of the State, restraining the individual will." That is the secret of peace and order in the community and when the utterance of the conscience of the State can be enforced as it can under our system of law, individual wrongs are righted, individual rights are protected, and peace among our citizens is assured.

May the day come when the same law shall apply to nations as to persons and when people who are individually civilized may cease to be collectively barbaric. And that day must come, when treaties between nations shall be as sacred as contracts between men, when those treaties shall be governed by international law, administered by a permanent international tribunal, and above all enforced by an international sheriff. That sheriff is lacking today. Then may we transfer to the rotunda of the great Peace Temple at the Hague, the pregnant inscription from the Worcester Court House, and it shall read: "Here speaketh the conscience of the *civilized world* restraining the *national* will." Then, and not till then, may men "beat their swords into plough-

shares and their spears into pruning hooks" for then "nation shall not lift up sword against nation, neither shall they learn war any more."

President Wing in introducing Honorable Joseph W. Symonds of the Cumberland Bar, said

There have always been giants on the earth. Moses in his histroy of the world before the flood says—"There were giants in the earth in those days —men of renown," and later after the exodus of the Israelites, Moses sent a committee to spy out the land of Canaan, to look over the land and the people and they found the sons of Anak and reported that they in their own sight were as grasshoppers and so they were in the sight of those mighty men. There are great lawyers to whom we similarly compare.

In the early days of this Association the men in charge were giants. Some of them to whose words we have listened with the greatest pleasure are no longer with us, but the memory of those leaders, former presidents of this Association, and the sound of their voices will never be forgotten by us, and their character and influence are still felt and the thought of our associations with Herbert M. Heath, Franklin A. Wilson and Orville D. Baker is a continuing solace. One among the great leaders of the Bar is with us tonight, a former President of this Association. His name and his fame as a

great lawyer, a forceful and effective advocate, a pattern in matters of legal practice, a great citizen and a cultured gentleman are well known even in the remotest hamlet of our State, who while he was a Justice of our Supreme Judicial Court, a position vacated only by his own desire, was a model of industry, learning, kindness and patience— whose wise counsel and generous assistance to young lawyers has ever been proverbial and whom the lawyers of Maine without exception delight to honor—Joseph W. Symonds of Maine.

Judge Symonds responded as follows:

I suppose a man may indulge a reasonable pride in his profession, a genuine satisfaction with it, without at the same time being required or disposed to claim that the millennium has come in it, more than in other departments of human acticity. That happy period of a thousand years, when the spirit of evil shall have been cast out and righteousness shall overspread the earth, still lies far off in the future, as the golden age of the early dreaming of the race is behind us in the past. Perhaps one is as unreal as the other.

We must live in the work-a-day world.

It may be that our profession is too much inclined to cling to the past. It loves the old ways, the beaten paths, where the ancient landmarks stand; preferring a precedent to a novelty, the voice of experience and authority—if the choice must be made—to the voice of reason untried, loitering pleasantly in the shadow of ancient things.

The shackles of tradition are upon it as upon society at large, and, careless of what the cultivated few are saying, it must move slowly with the people to the acceptance of new results after time has demonstrated their value. It is the heir of all the ages, content, prone to be too content, with its own inheritance, parting company slowly and reluctantly even with the venerable abuses to which it has long been accustomed, finding an interest and charm in the forms in which the majesty of buried peoples did sometimes march. Our professional tendency is conservative; its ruling motive, the permanence of the civil order, the steadiness of established things, the unbroken continuity of the old as it shapes itself into the new.

For our own satisfaction we may remember that conservatism and progress are the polar opposites, which hold the needle true.

There is place, therefore, for the adverse criticism, which assails this professional tendency when it lapses into excess; but criticism, itself, is not always sure to be free from extravagance. The President of the Republic, in a recent address at Indianapolis, has referred to the courts of the United States as antiquated and slow, behind the courts of other countries, in their ways of doing business. This is a severe arraignment. If one were hesitating to accept the full force of this statement, even from a man so lofty in character and station as President Wilson, he would doubtless recall the fact that the President's course of life has not been such as to give him the utmost familiarity with judicial procedure. Speed is not

everything in legal administration. There may be fault the other way, in being too fast rather than too slow. Action may be too prompt or quick to be sure of being either just or right. That is certainly worse than being too slow. The law's delay has never seemed to me to be an altogether unmixed evil. It has solved many a legal problem far more wisely than the court or the jury could do. It gives opportunity for adjustments to be made, and for the anger to abate which promotes so much unnecessary litigation. Time is the wisest of all things. You remember, in Disraeli's novel, Contarini Fleming, when the little party at the house of Besso, the banker, in Jerusalem, near the gate of Sion, was breaking up and each was writing a word of wisdom as a memento of his visit, the hero of the novel wrote the single word "Time."

It is the extremes—of haste or of delay—that are to be avoided. In the golden mean we shall walk most safely.

But, what is more important than any criticism, there is place for the splendid service some of the most distinguished members of our profession are rendering, in England and in this country, in modern times, in removing the trivialities, the technicalities and abuses which may gather about the administration of the law, and in enabling the courts to reach more and more directly, promptly and inexpensively the simple merits of disputed cases. This is the goal to which we all aspire.

It is perhaps true that in all our measures of improvement, whether in the courts or in public

affairs, we are inclined to lay too much stress upon the forms of institutions and the methods of procedure, and too little upon the spirit with which they are administered.

Let me illustrate.

For the period of about thirty years in the history of this country, the vast wealth of the South, invested mainly in negro slaves, exercised an influence which went far toward shaping the policies of the government. The statesmen of the South were able, adroit, accomplished, intensely devoted to their own purposes, and in the main were successful.

There came a time when the men of the North said that this course of things should stop.

What did they do?

They did not discover the initiative, or the referendum, or the recall, or the primary—although I would speak with disrespect of none of these. But the men of the North of that period pursued a far easier and readier way. They sent men to Congress who did not tremble when the lightnings flashed in the southern sky. Our own state sent William Pitt Fessenden to the United States Senate and when he heard the muttered threats of secession, turning to the men of the South, he said:

"If that is your treasonable purpose, do not delay on account of anybody at the North."

This was a new note in public discussion. The great days of Webster had passed. The last despairing effort of that supreme statesman to save the republic from the horrors of civil war had been made and had failed.

It was a new note in public discussion; a note that was to pass from the Senate to the battlefield, to be repeated and repeated, year after year, until the thunders of Gettysburg took it up.

So in our times.

Wealth has rolled in upon us like a flood. The vast prosperity of the country has accumulated fabulous fortunes, mountains of wealth, in a few hands, personal or corporate.

Besides this, men who devote their time to public affairs from interested motives, to serve private ends, have found the means of exercising great influence upon the policies of the government.

We tremble for fear this immense wealth, with such means of influence at its command, will control in its own interest conventions and legislatures. So we fly to the initiative and referendum.

But conventions and legislatures will not be so controlled, if the right men are in them. They will not be so controlled, if an aroused and imperative and indignant public sentiment is present, vigilant in its attention to public affairs and demanding its rights.

Wealth exists only by force of positive law. The boundaries of private right in property are subject at any moment to legislative change. Corporations themselves are but fictions which the statutes create and recognize. There is no occasion for the creator to tremble in the presence of the creature. The creator may at any time become the destroyer.

I do not deny that the initiative and referendum, the recall and primary, may be instruments of good government. Whether they are better than we had before, or not, is a question upon which there may be differences of opinion. What I should be disposed to insist upon is, that they are merely instruments—not ends, but means. They are simply tools. All depends upon the manner in which they are used. A poor workman may do a bad job with good tools just as well as with poor ones. No machine will work well with the hand of indifference or corruption to run it. All these later inventions may be misused and, if misused, may serve the very purposes of the baleful influences and forces against which they are aimed. Is it quite certain that the new do not lend themselves just as readily to the purposes of political scheming as the old?

Whatever may be the merits of these new measures—and that I leave wholly as an open question —our resort to them may serve as an illustration of the tendency there is with us to believe that society can be revolutionized, and we can all be saved, by some new form of law or mode of procedure, by some new legal process, or prohibition or penalty, when what is really needed is for us all to experience a change of heart, to be converted, radically, from the errors of our own ways.

What is far more important than the invention or discovery of any new form or method is, a more enlightened public sentiment and conscience, shaping itself constantly, incessantly, with eternal vigilance, into higher, purer, stronger, more just and more flexible forms of law.

If I may quote from myself on another occasion, I would say in closing:

A central and, within its field, an absolutely controlling authority, the State, is the necessary basis for the attainment or the permanence of high civilization. No power, influence, estate or interest must be allowed to rise above it. It must be able to resist and to extinguish all forces that are aimed at its own destruction. In America there can be no sovereignty except that of the law, and this must be supreme. The final judgment and will of the people, legally and constitutionally expressed, determining what is for the general advantage, slowly assuming legal form, the unseen sovereignty of the law, the majestic presence that silently presides over executive, senate and forum, of which legislation itself is but the expressed and embodied will, the judiciary the voice and the executive from the sheriff to the president merely the hand;—this and this alone, whatever methods it may adopt, must control at all hazard and at all cost. So at home at least, within our own borders, we shall have civil order, peace and all the arts and triumphs of peace. Whether in the end we shall be able to remain neutral, with an empire, based on military power and the divine right of kings, threatening to make vassal nations of all western Europe and to destroy everything within its reach that America stands for, or whether the dreadful clouds overhanging the battlefields of Europe will yet envelop us in their gloom, are questions we must leave to the future; but should we leave to the future our preparation to answer them as we mean, when the time shall come?

President Wing in introducing Mr. Wilbur H. Judkins of the Androscoggin Bar, said:

At home I have a neighbor, a dear friend, whose qualities of mind and kindness of heart endear him to all—a thorough lawyer in the very best sense of that name. He studies and thinks—then studies and thinks some more. Let it not be decided that his studious habit of mind develops cogitations resembling those of the owl, far from it. His geniality is constant and fun exudes from his every pore. Some of you enjoy his close acquaintance. I wish that pleasure was possessed by all. He modestly but reluctantly consented to respond to the call of his name tonight, and I am now pleased to call our brother, Wilbur H. Judkins of the Androscoggin Bar.

Mr. Judkins responded upon the subject "The Pursuit of Happiness" and in part spoke as follows:

"*Mr. President, and Brethren of the Maine Bar and Guests*:

In the presence of so many jurists and lawyers, gifted in wisdom and eloquence, I feel quite inadequate to the task of bringing you any new and startling message which might serve as a good digestive for this copious banquet, or render you safely immune to the experimental attacks of your family physician.

"The pursuit of happiness" has been a universal theme. The first paragraph in the Declaration of

Independence, and the first paragraph of the Constitution of Maine are not the only references to this important and ever living subject. Many wise men have said many wise things about it. Like the blessings of Divine Providence, it is a topic that is "new every morning, and fresh every evening." Even Hennessey and Casey have illuminated the theme. You will, perhaps, recall the interesting quasi judicial discussion between them. They were engaged in a somewhat animated colloquy over those unalienable rights which our Fathers denominated "life, liberty and the pursuit of happiness." They had no particular trouble in harmonizing their views on "life" and "liberty," but Casey was puzzled to know just what was meant by the "pursuit of happiness."

"I don't understand, Hennessey," said Casey apologetically, "just what our Fathers had in mind by the 'pursuit of happiness.' Did you ever pursue happiness, Hennessey," inquired Casey. Hennessey paused impressively. "Indade Oi have, Casey," replied Hennessey; "Indade Oi have and mony's the time I thought I'd overtaken her; but jes as y'er about to put yer arms around her, Casey, y'er always stub yer toe, an' she gits a fresh start. Y'er never can quite catch her, Casey, never quite catch her. And even with the help of the divorce court, and an occasional discharge in bankruptcy, y'er always a lap behind, Casey, y'er always a lap behind."

This dear old human nature of ours—dear in more senses than one—this dear old human nature of ours, which has kept the theologians busy ever

since Eve ate her apple and found it a lemon, and which has kept the judges and lawyers busy since the ancient days of Hammurabi, still survives in all its pristine vigor; and we are sorrowfully and reluctantly compelled to admit that its energy and versatility still keep us guessing. Baffled though it be for a time with some new remedy of our statesmen and philosophers, it will not seem to "stay down;" but reappears when and where least expected with its cynical, smiling face. And when we thought we had everything nicely and permanently settled just right, and that we would be able to take a long and comfortable nap after arduous labors, we no sooner get a snoring, than this old human nature wakes us from our anticipated quiet repose, and calls us onto the same "old job" of making the world right all over again.

Humor aside, I suppose it is true, and proved by human experience, that the only road in which we can pursue happiness with a reasonable expectation of overtaking her, is the great highway of discontent. There is a lot of dust there, and at times there is a lot of mud that we have to take or dodge; but one can count on the fact that happiness is ahead somewhere in the dust and the shadows, whether one is urged on in the pursuit by the love of gold, or by the love of fame, or by the love of some chaste and expurgated edition of femininity.

It is the pride and boast of those whose life work is the law, that, by the law impartially and humanely administered, the ambitions, the aspirations, the passions and hopes of human beings

may be so adjusted and controlled, that in the great life search for "good and welfare," and in the "pursuit of happiness," there may be realized a result that shall approximate the ideal. The pessimist, fixing his vision on the woes and wretchedness of mankind, swears to us very solemnly, that every stream of influence and power is a "river of doubt," and that every river of doubt empties into the gulf of despair.

The optimist, fortified by the joy and heroism of faith, discounting the harsh adversities of life, proclaims his unconquerable belief in the ultimate triumph of the Right.

In the universe of natural forces, law reigns, law, progressive and triumphant. So must law ultimately reign in that world where men and women toil and fight for shelter, for clothing and for bread. And this ceaseless toil and fight for shelter, for clothing, and for bread is, in the last analysis, "the pursuit of happiness."

And, in closing, I can not give you a better sentiment to remember, than one contained in a paragraph from one of the speeches of the late Senator Hoar of Massachusetts, whom I have no doubt we all admire for the greatness of his character, and for the purity, simplicity and nobility of his life. It is carved on the reverse side of his granite monument in Sleepy Hollow Cemetery in Concord. I copied it there. It is this:

"I believe in God, in the living God, and in the American People tried and true, who have never bowed the neck or bended the knee to any other,

and who do not ask that any other shall bow the neck or bend the knee to them. I believe that the world is growing better; and, though clouds may darken the horizon, that today is better than yesterday, and that tomorrow will be better than today."

By-Laws of the

Maine State Bar Association

Article 1. *Membership*

Members of the Bar in this State shall be eligible to membership and shall be elected at any legal meeting, upon the nomination of the committee on membership.

Article 2. *Officers*

The officers of this Association shall be a president, three vice-presidents, an executive committee, a committee on law reform, a committee on legal education and admission to the bar, a committee on legal history, a secretary and a treasurer. All these officers shall be elected by ballot at the annual meeting and shall hold office until others are elected and qualified in their stead.

Other standing committees than those above specified may be provided by the Association from time to time as may be found expedient.

Article 3. *President*

The president, or in his absence one of the vice-presidents, shall preside at all meetings of the Association. The president shall be, *ex-officio*, a member of the executive committee.

Article 4. *Executive Committee*

The executive committee shall consist of four members beside the president. They shall have charge of the affairs of the Association, make arrangements for meetings, order the disbursement of the funds of the Association, audit its accounts, and have such other powers as may be conferred on them by vote at any meeting of the Association.

Article 5. *Committee on Law Reform*

The committee on law reform shall consist of five members. It shall be the duty of this committee to consider and report to the Association such amendments of the law as should in their opinion be adopted; also to scrutinize proposed changes of the law, and when necessary report upon the same; also to observe the practical working of the judicial system of the State and recommend by written or printed reports, from time to time, any changes therein which experience or observation may suggest.

Article 6. Committee on Legal Education

The committee on legal education shall consist of one member from each county represented in the Association. Its duty shall be to prepare and report a system of legal education and for examination and admission to the practice of the profession in this State, and report from time to time such changes in the system of examination and admission as may be deemed advisable.

Article 7. Committee on Membership

The committee on membership shall consist of one member from each county represented in the Association. All applications for membership shall be made to the member from the county where the applicant resides, if any, otherwise to any member of the committee. Applicants shall be nominated for membership by the concurrence of three members of this committee.

Article 8. Committee on Legal History

The committee on legal history shall consist of so many members as the Association shall, from year to year, appoint.

Its duty shall be to provide for the preservation in the archives of the society, of the record of such facts relating to the history of the profession as may be of interest, and of suitable written or printed memorials of the lives and characters of distinguished members of the profession.

Article 9. *Secretary*

The secretary shall keep the records of the Association, have charge of its archives, and discharge such other duties as the Association may require.

Article 10. *Treasurer*

The treasurer shall collect and receive the dues of the Association, keep and by order of the executive committee disburse its funds, and discharge such other duties as may pertain to his office. Any person may fill the office of both secretary and treasurer if elected thereto. A vacancy occuring in either of these offices may be filled by appointment of the executive committee.

Article 11. *Meetings*

The annual meeting of the Association shall be held on the second Wednesday of January, at such place in the city of Augusta in the years in which the Legislature shall be in session, and in the alternate years at such place and time as the executive committee may determine. Special meetings may be called by the president, on application in writing of five members, ten days' notice of which by mail shall be given to each member by the secretary, stating the object of the meeting. Fifteen members shall constitute a quorum at any meeting.

Article 12. *Annual Dues*

Failure to pay any annual due within two years shall suspend the membership of the person in default. If such person shall pay at any time to the Treasurer all arrears due from him at the time of such suspension and also all intervening dues to the time of payment, he shall be re-instated in membership.

Amended Feb. 14, 1911 Jan. 11, 1911

Article 13. *Expulsion of Members*

Any member may be expelled for misconduct, professional or otherwise, by a two-thirds vote of the members present at any meeting after proper notice of the charges; and all the interest of any member in the property of the Association upon the termination of his membership, by expulsion, resignation or otherwise, shall thereupon vest absolutely in the Association.

Article 14. *Amendments*

These by-laws may be amended only by a two-thirds vote of the members present at an annual meeting of the Association.

OFFICERS SINCE ORGANIZATION

Presidents

Charles F. Libby, Portland, 1891 to 1896.
*Herbert M. Heath, Augusta, 1896 to 1897.
*Franklin A. Wilson, Bangor, 1897 to 1898.
*Charles E. Littlefield, Rockland, 1898 to 1899.
Wallace H. White, Lewiston, 1899 to 1902.
Joseph W. Symonds, Portland, 1902 to 1903.
Joseph C. Holman, Farmington, 1903 to 1904.
George D. Bisbee, Rumford Falls, 1904 to 1905.
*Orville D. Baker, Augusta, 1905 to Aug. 16, '08.
Luere B. Deasy, Bar Harbor, 1909 to 1911.
O. F. Fellows, Bangor, 1911 to 1913.
George C. Wing, Auburn, 1913 to 1915.
Fred J. Allen, Sanford, 1915 to

Secretary and Treasurer

Leslie C. Cornish, Augusta, 1891 to 1907.
Norman L. Bassett, Augusta, 1907 to

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*Deceased

Members of the

Maine State Bar Association

1915

Androscoggin County

Tascus Atwood, . .	Auburn
Fortunat Belleau, . .	Lewiston
H. E. Belleau, . .	Lewiston
Benjamin L. Berman, .	Lewiston
Edgar M. Briggs, . .	Lewiston
D. J. Callahan, . .	Lewiston
Charles B. Carter, . .	Lewiston
Seth M. Carter, . .	Auburn
J. G. Chabot, . .	Lewiston
Isaac B. Clary, . .	Livermore F'ls
John D. Clifford, Jr. . .	Lewiston
W. H. Clifford, . .	Lewiston
Henry E. Coolidge, .	Lisbon Falls
Franklin M. Drew, . .	Lewiston
Edward J. Hudon, . .	Lewiston
L. A. Jack, . . .	Lisbon Falls
W. H. Judkins, . .	Lewiston

Rogers P. Kelley, . .	Auburn
A. T. L'Heureux, . .	Lewiston
Fred H. Lancaster, . .	Auburn
F. E. Ludden, . .	Auburn
Harry Manser, . .	Auburn
J. H. Maxwell, . .	Livermore Falls
George S. McCarty, .	Lewiston
D. J. McGuillicuddy, .	Lewiston
Frank A. Morey, . .	Lewiston
John A. Morrill, . .	Auburn
Wm. H. Newell, . . .	Lewiston
Henry W. Oakes, . .	Auburn
John L. Reade, . .	Lewiston
W. B. Skelton, . .	Lewiston
A. E. Verrill, . .	Auburn
Dana S. Williams, . .	Lewiston
George C. Webber, . .	Auburn
Harrie L. Webber, . .	Auburn
Wallace H. White, .	Lewiston
Wallace H. White, Jr., .	Lewiston
George C. Wing, . .	Auburn
George C. Wing, Jr., .	Auburn

Aroostook County

Bernard Archibald, . .	Houlton
James Archibald, . .	Houlton
W. S. Brown, . . .	Mars Hill
Walter Cary, . . .	Houlton
Roland E. Clark, . .	Houlton
Charles F. Daggett, . .	Presque Isle
O. L. Farnsworth, . .	Caribou

Willis B. Hall, . .	Caribou
W. P. Hamilton, . .	Caribou
Ira G. Hersey, . .	Houlton
E. A. Holmes, . .	Caribou
J. A. Laliberte, . .	Fort Kent
Wallace R. Lumbert, .	Caribou
John B. Madigan, . .	Houlton
James D. Maxwell, . .	Island Falls
Leonard A. Pierce, . .	Houlton
Herbert T. Powers, . .	Fort Fairfield
Aaron A. Putnam, . .	Houlton
Beecher Putnam, . .	Houlton
H. W. Safford, . .	Mars Hill
R. W. Shaw, . . .	Houlton
S. S. Thornton, . .	Houlton

Cumberland County

George H. Allan, . .	Portland
Waldo H. Bennett, . .	Portland
Jacob H. Berman, . .	Portland
William S. Bradley, . .	Portland
Wilford G. Chapman, .	Portland
Frederick V. Chase, . .	Portland
Nathan Clifford, . .	Portland
Philip G. Clifford, . .	Portland
Joseph E. F. Connolly, .	Portland
Charles S. Cook, . .	Portland
John F. Dana, . .	Portland
Josiah H. Drummond, Jr., .	Portland
Isaac W. Dyer, . .	Portland
Frank Fellows, . .	Portland

James C. Fox, . .	Portland
M. P. Frank, . .	Portland
Eben W. Freeman, . .	Portland
E. O. Greenleaf, . .	Portland
Clarence Hale, . .	Portland
Frederick Hale, . .	Portland
C. A. Hight, . . .	Portland
Roscoe T. Holt, . .	Portland
G. Allen Howe, . .	Brunswick
Wm. M. Ingraham, . .	Portland
Howard R. Ives, . .	Portland
Hiram Knowlton, . .	Portland
W. J. Knowlton, . .	Portland
Frederic J. Laughlin, .	Portland
C. Thornton Libby, . .	Portland
*Charles F. Libby, . .	Portland
Wm. H. Looney, . .	Portland
John J. Lynch, . .	Portland
Frank H. Marshall, . .	Portland
Carroll W. Morrill, . .	Portland
Augustus F. Moulton. .	Portland
David E. Moulton, . .	Portland
George F. Noyes, . .	Portland
Raymond S. Oakes, . .	Portland
Franklin C. Payson, . .	Portland
J. Bennett Pike, . .	Bridgton
Barrett Potter, . .	Brunswick
Frank H. Purinton, . .	Portland
Wm. L. Putnam, . .	Portland
Edward M. Rand, . .	Portland
Robert E. Randall, . .	Freeport
Edward C. Reynolds, .	Portland
F. W. Robinson, . .	Portland

*Deceased

Maurice E. Rosen,	. .	Portland
J. H. Rousseau,	. .	Brunswick
Clarence E. Sawyer,	. .	Brunswick
George M. Seiders,	. .	Portland
Carroll B. Skillin,	. .	Portland
David W. Snow,	. .	Portland
H. W. Swasey,	. .	Portland
H. P. Sweetser,	. .	Portland
Joseph W. Symonds,	.	Portland
Stuart O. Symonds,	. .	Portland
Henry N. Taylor,	. .	Portland
Benj. Thompson,	. .	Portland
Edward F. Thompson,	.	Portland
H. M. Verrill,	. . .	Portland
Harry R. Virgin,	. .	Portland
Augustus H. Walker,	.	Bridgton
John A. Waterman,	. .	Gorham
Lindley M. Webb,	. .	Portland
Richard Webb,	. .	Portland
Edward W. Wheeler,	.	Brunswick
John S. White,	. .	Naples
Robert T. Whitehouse,	.	Portland
Virgil C. Wilson,	. .	Portland
Albert S. Woodman,	.	Portland
Edward Woodman,	. .	Portland

Franklin County

Thomas D. Austin,	. .	Farmington
Cyrus N. Blanchard,	.	Wilton
Frank W. Butler,	. .	Farmington
Currier C. Holman,	. .	Farmington

Joseph C. Holman, . .	Farmington
Sumner P. Mills, . .	Farmington
J. Blaine Morrison, . .	Phillips
Elmer E. Richards, . .	Farmington
Kenneth A. Rollins, . .	Farmington
John Allen Sweet, . .	Farmington
F. E. Timberlake, . .	Phillips
Josiah H. Thompson, .	Farmington

Hancock County

L. B. Deasy, . . .	Bar Harbor
Hannibal E. Hamlin, .	Ellsworth
Seth W. Norwood, . .	S. W. Harbor
John A. Peters, . .	Ellsworth
*E. P. Spofford, . .	Deer Isle
B. E. Tracey, . .	Winter Harbor
Chas. H. Wood, . .	Bar Harbor

Kennebec County

Charles L. Andrews, .	Augusta
Charles W. Atchley, . .	Waterville
Norman L. Bassett, . .	Augusta
Emery O. Beane, . .	Hallowell
Geo. K. Boutelle, . .	Waterville
A. H. Bridges, . .	Waterville
F. E. Brown, . . .	Waterville
Lewis A. Burleigh, . .	Augusta
Leroy T. Carleton, . .	Winthrop
F. W. Clair, . . .	Waterville
Oscar H. Dunbar, . .	Augusta

*Deceased

Frank L. Dutton, . . Augusta
Harvey D. Eaton, . . Waterville
Frank G. Farrington . Augusta
Geo. W. Field, . . Oakland
H. E. Foster, . . . Winthrop
A. M. Goddard, . . Augusta
Wm. T. Haines, . . Waterville
Geo. W. Heselton, . . Gardiner
Melvin S. Holway, . . Augusta
C. F. Johnson, . . Waterville
Treby Johnson, . . Augusta
Charles W. Jones, . . Augusta
Thomas Leigh, . . Augusta
Fremont J. C. Little, . Augusta
Thomas J. Lynch, . . Augusta
Benedict F. Maher, . . Augusta
Ernest L. McLean, . . Augusta
Carroll N. Perkins, . . Waterville
Arthur L. Perry, . . Gardiner
F. K. Shaw, . . . Waterville
G. T. Stevens, . . Augusta
*Asbury C. Stilphen,. . Gardiner
Samuel Titcomb, . . Augusta
Henry S. Webster, . . Gardiner
William Penn Whitehouse,. . Augusta
*Joseph Williamson, . . Augusta

Knox County

Alan L. Bird, . . . Rockland
Edward B. Burpee, . . Rockland
William T. Cobb, . . Rockland
Oscar H. Emery, . . Camden

*Deceased

Edw. K. Gould,	. .	Rockland
Frank H. Ingraham,	.	Rockland
Arthur S. Littlefield,	.	Rockland
J. H. Montgomery,	. .	Camden
Jos. E. Moore,	. .	Thomaston
Reuel Robinson,	. .	Camden
L. M. Staples,	. .	Washington
R. I. Thompson,	. .	Rockland
Oscar H. Tripp,	. .	Rockland
C. M. Walker,	. .	Rockland
Frederick S. Walls,	. .	Vinal Haven
Milton W. Weymouth,	.	Rockland

Lincoln County

Emerson Hilton,	. .	Wiscasset
James B. Perkins,	. .	Boothbay Har.
William N. Titus,	. .	Alna
Cyrus R. Tupper,	. .	Boothbay Har.

Oxford County

Albert Beliveau,	. .	Rumford Falls
George D. Bisbee,	. .	Rumford Falls
Spaulding Bisbee,	. .	Rumford
L. W. Blanchard,	. .	Rumford Falls
Fred R. Dyer,	. .	Buckfield
P. C. Fickett,	. .	West Paris
Alfred S. Kimball,	. .	Norway
Ralph T. Parker,	. .	Rumford Falls
Albert J. Stearns,	. .	Norway
John P. Swasey,	. .	Canton

Alton C. Wheeler, . .	South Paris
J. S. Wright, . .	South Paris

Penobscot County

Frederick H. Appleton, .	Bangor
Taber D. Bailey, . .	Bangor
Benjamin W. Blanchard, .	Bangor
Irving O. Bragg, . .	Newport
Winfield S. Brown, . .	Dexter
James H. Burgess, . .	Bangor
James A. Cahners, . .	Bangor
Hugh R. Chaplin, . .	Bangor
Milton S. Clifford, . .	Bangor
Hugo Clark, . . .	Bangor
Charles P. Conners, . .	Bangor
J. Willis Crosby, . .	Dexter
Charles J. Dunn, . .	Orono
O. F. Fellows, . . .	Bangor
Raymond Fellows, . .	Bangor
Bertram L. Fletcher, .	Bangor
P. B. Gardner, . .	Bangor
P. H. Gillin, . . .	Bangor
Joseph F. Gould, . .	Old Town
F. W. Halliday, . .	Newport
P. A. Hasty, . . .	Dexter
Lawrence V. Jones, . .	Bangor
Mathew Laughlin, . .	Bangor
John R. Mason, . .	Bangor
John B. Merrill, . .	Bangor
Henry L. Mitchell, . .	Bangor
Wm. H. Mitchell, . .	Newport

Ulysses G. Mudgett,	.	Bangor
F. H. Parkhurst,	. .	Bangor
W. H. Powell,	. .	Old Town
Allen E. Rogers,	. .	Orono
Erastus C. Ryder,	. .	Bangor
Bertram L. Smith,	. .	Patten
Donald F. Snow,	. .	Bangor
Louis C. Stearns, Jr.,	.	Bangor
George W. Thombs,	.	Lincoln
Geo. E. Thompson,	. .	Bangor
Franklin A. Wilson,	. .	Bangor
John Wilson,	. .	Bangor

Piscataquis County

William A. Burgess,	. .	Dover
M. L. Durgin,	. .	Milo
Ross St. Germain,	. .	Greenville
Frank E. Guernsey,	. .	Dover
Robert E. Hall,	. .	Dover
Charles W. Hayes,	. .	Foxcroft
George W. Howe,	. .	Milo
Henry Hudson,	. .	Guilford
James H. Hudson,	. .	Guilford
Frank C. Merritt,	. .	Dover
Willis E. Parsons,	. .	Foxcroft
Alfred R. Peaks,	. .	Foxcroft
Francis C. Peaks,	. .	Dover
*Joseph B. Peaks,	. .	Dover
Edgar C. Smith,	. .	Foxcroft
John F. Sprague,	. .	Monson

*Deceased

Sagadahoc County

Arthur J. Dunton, . .	Bath
*Wm. T. Hall, . . .	Richmond
Wm. T. Hall, Jr., . .	Bath
George E. Hughes, . .	Bath
John J. Keegan, . .	Bath
Harold M. Sewall, . .	Bath
*Frank L. Staples, . .	Bath
Joseph M. Trott, . .	Bath

Somerset County

T. A. Anderson, . .	Pittsfield
Bernard Gibbs, . .	Madison
Harold I. Goss, . .	Bingham
George W. Gower, . .	Skowhegan
Fred F. Lawrence, . .	Skowhegan
Daniel Lewis, . .	Skowhegan
John W. Manson, . .	Pittsfield
Edward F. Merrill, . .	Skowhegan
E. N. Merrill, . .	Skowhegan
Elmer W. Sawyer, . .	North Anson
Augustine Simmons, . .	North Anson
C. O. Small, . . .	Madison
James H. Thorne, . .	North Anson
L. L. Walton, . .	Skowhegan

Waldo County

Ellery Bowden, . .	Winterport
John R. Dunton, . .	Belfast

*Deceased

R. F. Dunton,	.	Belfast
George E. Johnson,	.	Belfast
Eben F. Littlefield,	.	Belfast
Ralph I. Morse,	.	Belfast
Arthur Ritchie,	.	Liberty
Wm. P. Thompson,	.	Belfast

Washington County

James M. Beckett,	.	Calais
Frederick Bogue,	.	East Machias
George A. Curran,	.	Calais
Clement B. Donworth,	.	Machias
Herbert J. Dudley,	.	Calais
George R. Gardner,	.	Calais
H. H. Gray,	.	Millbridge
J. H. McFaul,	.	Eastport
I. G. McLarren,	.	Eastport
Harold H. Murchie,	.	Calais
L. H. Newcomb,	.	Eastport
Elisha W. Pike,	.	Eastport

York County

Fred J. Allen,	.	Sanford
Eva E. Bean,	.	Old Orchard
James O. Bradbury,	.	Saco
Elmer J. Burnham,	.	Kittery
Arthur J. B. Cartier,	.	Biddeford
Benjamin F. Cleaves,	.	Biddeford
Aaron B. Cole,	.	Eliot
George A. Emery,	.	Saco
Willis T. Emmons,	.	Saco

Walter J. Gilpatrick, .	Biddeford
Edward F. Gowell, . .	Berwick
*Frank M. Higgins, . .	Limerick
Louis B. Lansier, . .	Biddeford
Percy N. H. Lombard, .	Old Orchard
Joseph R. Paquin, . .	Biddeford
Charles H. Prescott, . .	Biddeford
John C. Stewart, . .	York Village
Edwin Stone, . . .	Biddeford
Lucius B. Swett, . .	Kittery
Homer T. Waterhouse, .	Kennebunk
Hiram Willard, . . .	Sanford

*Deceased

COUNTY BAR ASSOCIATIONS AND THEIR OFFICERS, 1915

Androscoggin County Bar Association
George C. Wing, Pres. Henry W. Oakes, Sec.

Aroostook Bar Association
Peter C. Keegan, Pres. Ransford W. Shaw, Sec.

Cumberland Bar Association
David W. Snow, Pres. Benj. G. Ward, Sec.

Franklin County Bar Association
James Morrison, Pres. Byron M. Small, Sec.

Hancock County Bar Association
L. B. Deasy, Pres. William E. Whiting, Sec.

Kennebec Bar Association
Geo. W. Heselton, Pres. Charles L. Andrews, Sec.

Knox County Bar and Library Association
J. H. Montgomery, Pres. Walter H. Butler, Sec.

Lincoln County Bar Association
R. S. Partridge, Pres. C. L. Macurda, Sec.

Oxford Bar Association
John P. Swasey, Pres. Walter L. Gray, Sec.

Penobscot Bar Association

F. H. Appleton, Pres. John Wilson, Sec.

The Trustees of the Law Library in the County of Piscataquis

John F. Sprague, Pres. Willis E. Parsons, Sec.

Sagadahoc Bar Association

*William T. Hall, Pres. Walter S. Glidden, Sec.

Somerset Bar and Law Library Association

David D. Stewart, Pres. Wm. T. Seekins, Sec.

Waldo County Bar Association

Geo. E. Johnson, Pres. Carleton Doak, Sec.

Washington County Bar Association

John F. Lynch, Pres. Clement B. Donworth, Sec.

York Bar Association

George A. Emery, Pres. Leroy Haley, Sec.

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*Deceased

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